PUBLIC LIBRARY
FORT WAYNE & ALLEN CO., IND.

GENEALOGY COLLECTION

GEN

ALLEN COUNTY PUBLIC LIBRARY
3 1833 01742 0768

GENEALOGY
973.006
J62
V.18

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE
HERBERT B. ADAMS, Editor

History is past Politics and Politics are present History.—*Freeman*

VOLUME XVIII

TAXATION IN SOUTHERN STATES
CHURCH AND EDUCATION

BALTIMORE
THE JOHNS HOPKINS PRESS
1900

COPYRIGHT, 1900, BY
N. MURRAY

The Lord Baltimore Press
THE FRIEDENWALD COMPANY
BALTIMORE, MD., U. S. A.

A 710.16

TABLE OF CONTENTS.

I-IV. Studies in State Taxation, with Particular Reference to the Southern States. By Graduates and Students of the Johns Hopkins University. Edited by J. H. HOLLANDER. 1

V-VI. The Colonial Executive Prior to the Restoration. By P. L. KAYE. 255

VII. Constitution and Admission of Iowa into the Union. By J. A. JAMES. 341

VIII-IX. The Church and Popular Education. By H. B. ADAMS. 393

X-XI-XII. The Struggle for Religious Freedom in Virginia: The Baptists. By W. T. THOM. 477

STUDIES IN STATE TAXATION

WITH PARTICULAR REFERENCE TO THE SOUTHERN STATES

SERIES XVIII NOS. 1-2-3-4

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE
HERBERT B. ADAMS, Editor

History is past Politics and Politics are present History.—*Freeman*

6661

STUDIES IN STATE TAXATION

WITH PARTICULAR REFERENCE TO THE
SOUTHERN STATES

BY GRADUATES AND STUDENTS OF THE
JOHNS HOPKINS UNIVERSITY

EDITED BY
J. H. HOLLANDER, PH. D.
Associate Professor of Finance

305
J62
v.18

BALTIMORE
THE JOHNS HOPKINS PRESS
JANUARY-APRIL, 1900

Copyright, 1900, by
N. MURRAY

The Lord Baltimore Press
THE FRIEDENWALD COMPANY
BALTIMORE, MD., U. S. A.

TO

HERBERT B. ADAMS

PREFACE

The five essays contained in the present volume have a common origin in a series of informal class reports prepared by students of the Johns Hopkins University in connection with a course of graduate instruction upon American commonwealth finance. With a view to supplementing the inadequate material available, certain members of the class undertook to examine and describe the finances of a group of states. Each investigator selected his native state or a state with whose economic life he was in a measure familiar. The problem of taxation was made the central point of investigation.

The results obtained were so interesting and significant as to suggest presentation in more deliberate and detailed form. Accordingly, additional material was gathered and a uniform plan of statement was adopted. Accident or circumstance prevented the completion of all of the studies originally undertaken, but the five here published are typical both in character and in result of the entire inquiry. Attention was centered, as will appear, upon the Southern States—Kansas being, with respect to fiscal problems, essentially within that category.

The essays will, it is hoped, prove useful as contributing fresh and instructive material for the study of American commonwealth taxation. In state as in municipal finance, the arrangement and presentation of essential data must

serve as a preliminary both to scientific study and to practical reform. The way was early blazed by a few earnest workers, and at no time has there been the dearth of accessible subject-matter which the student of municipal economics laments. But the field of state taxation is extensive and conditions change quickly, and the utility of a series of descriptive studies made simultaneously and upon an identical plan by competent investigators is self-evident.

If the several essays possess any particular significance and if there be any unity underlying the volume, it is as emphasizing the impracticability of any universal application of commonly accepted principles of tax reform. It is upon the fiscal conditions of the more advanced commonwealths, where abuses are greatest, both in kind and in degree, that the attention of writers on American public finance has hitherto been centered. The more careful investigators have been explicit in stating that whatever conclusions might be reached were applicable only to similarly circumstanced societies. But the caution has not always been respected, and the science of finance like the science of economics is exposed to the danger of mischief-making as a result of rule-of-thumb application of qualified theory. Detailed acquaintance with the fiscal experience of a group of less highly developed states, where corporate organization is limited and intangible wealth a minor element, can not fail to prove serviceable in this connection.

In addition to the acknowledgment of special aid from various sources which the author of each essay has made, the editor desires to express cordial appreciation of suggestion and encouragement received from his friend and col-

league, Professor Sidney Sherwood, and from Mr. N. Murray of the Johns Hopkins Press. The inscription of the volume to Professor Herbert B. Adams, the editor of the series in which it appears, is insufficient recognition of the stimulus and aid received from this source.

J. H. HOLLANDER.

Johns Hopkins University,
December 23, 1899.

CONTENTS

PAGE

I. Taxation in Maryland, ... 13
By Thomas Sewall Adams, Ph. D.

II. Taxation in North Carolina, ... 77
By George Ernest Barnett, A. B.

III. Taxation in Kansas, ... 115
By Elbert Jay Benton, A. B.

IV. Taxation in Mississippi, ... 177
By Charles Hillman Brough, Ph. D.

V. Taxation in Georgia, ... 217
By Laurence Frederick Schmeckebier, Ph. D.

I.

TAXATION IN MARYLAND[1]

By THOMAS SEWALL ADAMS

Industrial Characteristics

Maryland is a border state, industrially as well as politically, dividing the Atlantic states into two distinct groups and partaking of the industrial characteristics of both.[2] Northern and northwestern Maryland resembles Pennsylvania: wheat, hay and corn constitute the principal products; there are extensive mining interests; the population is dense, and negroes are scarce. On the other hand, southern Maryland is closely allied, both in political and industrial characteristics, to the south. Population is sparse, tobacco is still one of the chief products, and in two of the southern counties the negroes outnumber the whites.

---

[1] In the preparation of the following pages special aid has been received from Hon. Robert P. Graham, State Tax Commissioner, and Mr. J. A. J. Medcalf of the Appeal Tax Court of Baltimore City.

[2] The medial position of Maryland with respect to those economic qualities which influence a system of taxation is illustrated in the following table (see "Statistical Abstract of the Eleventh Census," second edition):

	True wealth, *per capita.*	Assessed wealth, *per capita.*	Percentage of true wealth assessed for taxation.	Average size of farms, (acres.)	Percentage of unimproved land.
United States	$1036	$407	39	137	43
North Atlantic Div...	1202	626	51	95	32
Maryland	1041	507	49	121	35
South Atlantic Div...	579	255	34	134	58

With respect to those resources which furnish useful criteria of the taxable capacity of a community, there is perhaps no more representative state in the Union. Nature has been particularly generous to Maryland in the distribution of gifts. In the northwestern counties of the state, coal and iron mining are carried on with success. In the central counties are found some of the finest marble, granite, and sandstone quarries in the United States. In the eastern portion, Chesapeake Bay offers an inexhaustible source of wealth in its varied shell and fish products. The concurrence of the figures for Maryland and the United States expressing true wealth *per capita*, was shown in the preceding foot note. This consilience is well maintained in the other groupings of the census reports, which are accurate enough for the present purpose. In 1890 the total (" true ") value of real and personal property in Maryland was $1,085,473,048; the total value of farm products, $26,443,364; of manufactured products, $171,842,593; of mineral products, $5,089,447; of products of fisheries, $5,654,024. Among the fifty-one territorial districts differentiated in the census returns,[1] Maryland stood nineteenth with respect to the amount of real and personal property, twenty-ninth with respect to the value of farm products, twenty-fourth with respect to the value of mineral products, fourteenth with respect to the value of manufactured products, and second with respect to the value of the products of fisheries.

Passing from this general comparison to Maryland itself,

[1] Forty-five states, five territories and the District of Columbia. The comparison in the text will suffice to give a useful idea of the relative standing of Maryland, without having the various sources of wealth reduced to a *per capita* basis. Assuming that the necessary expenditures of a state are roughly determined by the size of the population, Maryland should occupy a central rank with respect to the various sources of wealth in order to have an average tax-paying capacity. In 1890 Maryland stood twenty-seventh among the fifty-one states and territories with respect to population, the average population per district being about 1,235,000, that of Maryland, 1,042,000.

the most striking characteristic of the state in this connection is the predominant importance of Baltimore City. So far as taxation is concerned, Baltimore is of more importance than the rest of the state combined. In 1890 nearly one-half of the whole population of Maryland lived in Baltimore; the next census will probably show that more than one-half lives in that city. In 1898 the total assessed value of property in Maryland was about $603,000,000. Of this, more than one-half, $332,000,000, was located in Baltimore. Of the receipts from taxes other than the property tax, Baltimore contributes very much more than one-half.

Excluding Baltimore City, the interests of the state are chiefly agricultural. Hay, wheat, and corn are the chief crops. But the production of staple agricultural products is undergoing a relative decline. This is shown nowhere so clearly as in the production of tobacco. In 1884, 41,811 acres were devoted to tobacco in Maryland, and the total crop was valued at $2,281,615. In 1896, 15,995 acres were planted in tobacco and the crop was worth $398,915. The plantation, the feudal manor, the slaves have passed. Tobacco is no longer king.[1] The production of export staples is declining; plantations are being cut up into truck farms, and the farmer directs his efforts toward supplying the wants of urban residents engaged in trade and manufactures. In many of the farming districts, canning factories have sprung up, and there are often as many people and as much capital dependent upon the prosperity of the factories as upon the success of the farms.[2] Agriculture has become a function of commerce and manufactures.

[1] In 1896 the potato crop was worth nearly twice as much as the tobacco crop.

[2] ". . . . this canning industry has grown of late years to enormous proportions, and has given a great stimulus to truck farming. Maryland has been the leading state, and Harford the leading county, for this industry until 1891, when from various causes New Jersey took the lead, to yield it again, however, in 1892." "Maryland, its Resources, Industries and Institutions" (Baltimore, 1893), p. 175.

In 1890 there were but six states in the United States in which the density of population was greater than in Maryland. In that year 42 per cent. of the whole population (1,042,390) lived in Baltimore City; 46 per cent. in the five towns of more than 5000 inhabitants, and 51 per cent. in the thirty-five towns possessing more than 1000 inhabitants. Of the total male population, 33 per cent. were engaged in agriculture, mining and fisheries; 3 per cent. in professional service; 18 per cent. in domestic service; 20 per cent. in trade and transportation; 25 per cent. in manufacturing and mechanical industries.

From this brief survey it may reasonably be inferred that the sphere of public activity in Maryland is moderate, not so extensive as in the richer states of the north, less restricted than in the poorer states of the south and southwest. Owing to the medial position of the state, we may expect its tax system to share the characteristics of taxation in both the northern and the southern states, and from the predominance of Baltimore City we may infer that the main dependence will be placed upon the commercial and manufacturing, rather than upon the agricultural classes.

General Finances

The Fund System. The preparation of the budget, the collection of taxes, and the general superintendence of fiscal affairs in Maryland, are entrusted to a comptroller, who is elected at the general state election for a term of two years, and who receives a salary of $2500 per annum. The greater part of the revenues of the state are received and disbursed according to the fund system. The state tax-rate of 17¾ cents on each hundred dollars of assessed value, is made up of certain partial rates or levies, the proceeds of each of which are strictly segregated in corresponding funds or accounts. These funds cannot legally be used to defray any other than the respective charges for which they were collected. Many of the non-tax receipts are also credited to specific funds and cannot be used to meet gen-

eral expenses. Thus, oyster fines, oyster licenses, etc., go to the "Oyster Fund" which must be expended in the maintenance of the "oyster navy" and for other allied purposes determined by law. The administrative expenses of the government cannot be defrayed out of the proceeds of the property tax, but must be paid out of the license receipts, inheritance and franchise taxes, etc. The unnecessary rigidity of the fund system is a standing cause of complaint on the part of the comptrollers, but it has never been abandoned. In times of stress the law is sometimes disregarded by borrowing from one fund for the use of another, but this is the exception and not the rule.

Expenditures. Some idea of the extent of the state's fiscal activity may be gathered from a summary of the expenditures of 1898. In that year there were expended for the purposes indicated, the following amounts:

Education	$1,155,815.00
Legislative and executive departments	371,851.22[1]
Sinking funds	281,000.00
Interest on debt	301,049.58
Charities	189,266.88
Militia	182,563.00
Judicial department	151,503.07
Penal and reformatory institutions	78,000.00
Industrial development	26,475.46[2]
Health	14,325.98
Maintenance of buildings	10,591.01
Miscellaneous	8,735.22
Book-transfers, cities and counties	464,925.08[3]
Balance	566,351.30
Total	$3,802,452.80

[1] I have been unable to differentiate the expenditures of the legislative and executive departments.

[2] The item "Industrial development" is made up of the expenditures of the immigration bureau, the expense of conducting the industrial bureau, etc.

[3] The item "Book-transfers, cities and counties" is made up of two transfers to the free school fund from other funds, plus $404,355.72 returned to Ellicott City and Baltimore as their share in the high liquor licenses collected in those two cities. This money probably never goes to the state treasury.

As this paper is devoted principally to taxation, no elaboration of these features can be given. Some idea of the division of function between state and counties may be gathered from a comparison of the state and the local tax-rates. The state rate has been 17¾ cents on the hundred dollars for ten years. The average county rate on the same valuation was $1.32 per hundred in 1897.[1] The total *ad valorem* rate would consequently be about $1.50 per hundred, of which 88 per cent. was local and 12 per cent. state. The *ad valorem* rate, as calculated in the federal census of 1890, was $1.54.

Of the 17¾ cents levied by the state, 12½ cents is levied for the maintenance of the public schools and the purchase of school books. The proceeds of this tax are divided among the counties and the city of Baltimore in proportion to their respective numbers of inhabitants between the ages of five and twenty years. This is of course supplemented by local school taxes. The school tax in Baltimore City, for example, was 45¾ cents in 1898.

Revenues. A word of explanation is perhaps necessary in regard to the terminology here employed. The several taxes have been differentiated in accordance with the classes of society upon which they bear. The line of cleavage is personal: between the "subjects" not the "objects" of taxation. Thus, that part of the general property tax collected from corporations has been included under the heading "corporation taxes."

It has been thought best to treat pure fees as non-tax receipts. When a fee more than pays the cost of the service for which it is charged, however, the excess constitutes a true tax. The item "excess of fees" is of this nature. The receipts for the fiscal year 1898 were as follows:

[1] A weighted mean was taken, the several local rates being weighted in accordance with the population of the respective districts. The Baltimore City rate is included, as Baltimore is not in any county.

Quasi-private receipts

Dividends on bonds and stocks	$100,962.85
From industries carried on in state institutions.	36,991.61
Interest on public moneys	16,850.83
Income from public property	11,377.58
Fines and forfeitures	8,763.51
Fees	5,708.11
Miscellaneous receipts	631.94
Military emergency fund	125,000.00
Balance	707,138.58

Tax receipts

Property tax	$1,092,899.85
License taxes	913,876.57
Corporation taxes	515,690.31
Inheritance tax	134,279.90
Excess of fees	64,363.99
Tax on commissions of executors and administrators	49,875.54
Miscellaneous taxes	15,041.63
Total	$3,799,452.80

In view of the practice, more often encountered in municipal than in state finance, of raising a large portion of the ordinary revenue by borrowing, very great interest attaches to the proportion of revenue raised by loans. It will be shown below[1] that in the twenty-one years, 1877-97, Maryland borrowed 12 per cent. of the total amount of revenue raised in that period.

The proportion of the tax to the non-tax receipts is a question of less importance, but still worthy of notice. In 1898, 27 per cent. of the total revenue came from sources other than taxation. The average importance of the non-tax receipts is, however, greater than this. The proportion for 1898 is unduly low because no loans were floated. To secure useful statistics on this point a long period of years must be taken, and according I have calculated the proportion of the non-tax receipts to the total revenue in each of the twenty-one years between 1877 and 1897 inclusive. The

[1] See page 25.

average proportion for these years was 41 per cent. The total revenue raised in this period was nearly $67,000,000, of which the non-tax receipts amounted to more than $27,000,000.

Excluding the two extraordinary items, military emergency fund and balance, the largest item which now appears regularly among the non-tax receipts is the annual mortgage payment of $90,000 from the Northern Central Railroad Company. The next largest receipt, $27,871.84, is from the Maryland Penitentiary. In 1897 the receipts from the latter institution were $10,000 less, $17,724.45. A study of the remarkable development of this source of revenue would furnish a valuable illustration of the power of able management to make such institutions self-supporting.

When one recalls the immense investments of Maryland in private enterprises, it is amazing that the returns from these investments should now be so insignificant. One by one the dividends have ceased. Until 1877 the annual payments from the Susquehanna and Tide Water Canal Companies, and from the Chesapeake and Ohio Canal Company, constituted items of great importance in the revenues of the state. But these payments have been long since discontinued. In 1897 the comptroller reported more than $8,500,000 of unproductive stocks; the unpaid interest on these holdings would increase this amount to about $30,000,000. During the fiscal year 1898, the annual dividend of $27,500 from the Washington Branch of the Baltimore and Ohio Railroad ceased. With the transfer of this stock to the unproductive list is written the last chapter of the history of state aid to internal improvement projects in Maryland—a history of consistent failure and repeated loss.

Relative Importance of the Several Tax Receipts. From the standpoint of practical finance few questions are of greater importance than that of the relative productivity of the several forms of taxation. An examination of the receipts from the various state taxes for the years, 1877-1898, shows that the order of importance indicated in the

classification of receipts on page 19 is substantially accurate, the only difference being that on the average of the twenty-two years noted, the tax on the commissions of executors and administrators is more important than the excess of fees. During the twenty-two years, 1877-1898, 44 per cent. of the total tax receipts came from the property tax, 33 per cent. from licenses, 15 per cent. from corporation taxes, 4 per cent. from the inheritance tax, nearly 3 per cent. from the tax on commissions of executors and administrators, nearly 2 per cent. from excess of fees, and less than 1 per cent. from the remaining taxes.

During the first half of the present century the revenue of the state was derived chiefly from licenses and it was not until after the Civil War that the receipts from the property tax began to show a regular excess over the proceeds of the licenses. The average importance of the license taxes as determined by the receipts for the twenty-two years, 1877-1898, shows no signs of abatement. During the first half of this period, 1877-1887, licenses contributed 29 per cent. of the total tax receipts, and the property tax 48 per cent. During the second half, 1888-1898, the license receipts constituted 36 per cent., the property tax 40 per cent. With the growing tendency to impose higher licenses upon the liquor traffic, there is no reason to anticipate a diminution in the relative importance of this source of revenue.

The corporation taxes, on the contrary, are not increasing in importance as rapidly as might be expected. The receipts from this source are indeed increasing, both relatively and absolutely. But considering the number of entirely new corporation taxes which have been adopted in the last twenty years, the results are somewhat disappointing. From 1877 to 1887, 13 per cent. of the total tax-receipts came from corporations. During the period 1888-1898 this proportion rose to 16 per cent.

The receipts from the inheritance tax and the tax on commissions of executors and administrators vary greatly from year to year. The actual revenue from each source is

increasing, the relative importance of each is decreasing. In the case of the inheritance tax the decrease is so slight as to be very doubtful. In the tax on the commissions of executors, however, the tendency is marked. From 1877 to 1887 this tax yielded nearly 5 per cent. of the total tax receipts. During the period 1888-1898 this proportion was less than 2½ per cent.

The excess of fees returned each year to the state treasury is increasing both in amount and in proportion to the total receipts from taxation. In itself the item is unimportant: $46,000 were received from this source in 1897, $64,000 in 1898. But as an indication of the condition of the general financial system of the state, the item is very important. An increase in the relative importance of the amount of fees returned means that the public offices of the state are being managed with greater economy and the officials are being held to a stricter account.

The State Debt. The financial condition of the State of Maryland, distinguishing state from local conditions, is healthy. The tax-rate is low, the debt small, the sinking funds large and well managed, and the interest payments normal. In general the prospects are decidedly encouraging.

The first great internal improvement undertaken by the federal government, the Cumberland or National Road, lay partly within this state, and the example was too much for the people of Maryland. During the second and third decades of the century they were affected by the mania for internal improvement in a particularly acute form. Marvelous expectations were entertained; canals, turnpikes, railroads were to be built and the state treasury was to be enriched by the profits of these enterprises, while the people thrived on the trade they were to bring. Between 1832 and 1839 the state expended nearly twelve millions in encouraging internal improvement, and large returns were confidently expected in a few years.

The crisis of 1837 found Maryland in a state of industrial

demoralization, with an immense debt and a people ignorant of the meaning of state taxation. The situation was faced boldly at first. The state declared its intention of paying all obligations in sound money and a stringent tax law was passed in 1841. But it was the courage of ignorance. The taxes could not be collected, and in January, 1842, the state failed to make the annual interest payment upon the debt. Had it not been for this experiment in internal improvement, Maryland would probably have no funded debt to-day.

The above facts have been given for the purpose of explaining the genesis of the state debt and the revival of direct taxation in 1841. Only a few words can be devoted to the further history of the debt. Owing largely to the strenuous efforts of George Peabody and Governor Pratt, the accumulated interest was funded and the state put upon a sound financial basis again. Governor Thomas, who was inaugurated in January, 1848, was soon able to report that the credit of the state had been wholly rehabilitated and that foreign investors were buying Maryland bonds freely in the London markets. In 1851 a new constitution was adopted. That the people of Maryland had learned a wholesome lesson is shown by the insertion in this constitution of the following section, whose influence in the financial history of Maryland has been almost incalculable. With the exception of the clause enclosed in brackets and the addition of one unimportant provision, this section is retained in the present constitution:

" No debt shall hereafter be contracted by the Legislature unless such debt shall be authorized by a law providing for the collection of an annual tax or taxes sufficient to pay the interest on such debt as it falls due, and also to discharge the principal thereof within fifteen years from the time of contracting the same, and the taxes laid for this purpose shall not be repealed or applied to any other object until the said debt and the interest thereon shall be fully discharged [and the amount of debts so contracted and remaining unpaid shall never exceed one hundred thousand

dollars]. The credit of the State shall not, in any manner, be given or loaned to or in aid of any individual, association or corporation, nor shall the General Assembly have the power, in any mode, to involve the State in the construction of works of internal improvement, or in any enterprise which shall involve the faith or credit of the State, or make any appropriations therefor. And they shall not use or appropriate the proceeds of the internal improvement companies, or of the State Tax now levied, or which may hereafter be levied, to pay off the public debt, to any other purpose, until the interest and debt are fully paid, or the sinking fund shall be equal to the amount of the outstanding debt; but the Legislature may, without laying a tax, borrow an amount, never to exceed fifty thousand dollars, to meet temporary deficiencies in the Treasury that may be necessary for the defense of the State." [1]

From 1851 until the Civil War the debt was kept well in hand; but during the war the debt was greatly increased by loans necessitated by the peculiarly exposed condition of the state. The importance of the later funding operations, as compared with the general finances of the state, is indicated in the table on the following page.

From this table some concrete idea of the course of the state debt may be gathered, as well as of the amounts and relative importance of the interest payments. In the twenty-two years, 1877-1898, Maryland raised an aggregate revenue of more than $70,000,000. Of this, a little less than $8,000,000, or 11 per cent., was raised by borrowing. In the same period, the aggregate expenditures of the state amounted to about $57,000,000, of which 19 per cent. was devoted to the payment of interest upon the debt.

The decline of the debt and the variation of the annual interest payment throughout this period are very encouraging. In 1898 each of these items was less than one-half of what it had been in 1877. During the ten years, 1877-

[1] Art. III, sec. 22, Constitution of 1851.

1886, the annual interest payment was on an average 30 per cent. of the annual expenditures, and the average net debt was nearly $7,000,000. During the ten years, 1889-1898, the average proportion of interest payments to total expenditures was less than 12 per cent. and the average net debt was less than $3,500,000. It is proper to add that what we have called the "net debt" is obtained by sub-

Years.	Total receipts.	Loans.	Gross debt.	Sinking funds and other assets	Net debt.	Total expend-itures.	Interest pay-ments.	Ratio of int. pay'ts to total expend-iture.
	000's omitted.	000's omitted.	000's omitted.	000's omitted.	000's omitted.	000's omitted.	000's omitted.	Per cent.
1877..	$2,511	$219	$10,759	$4,362	$6,396	$2,113	$645	31
1878..	2,693	571	10,773	4,736	6,037	2,489	653	26
1879..	2,330	269	11,260	3,585	7,674	1,774	622	35
1880..	2,564	....	11,277	3,649	7,628	2,051	674	33
1881..	2,510	....	11,258	3,695	7,562	1,759	643	37
1882..	2,677	....	11,269	3,863	7,406	2,038	620	30
1883..	2,736	....	11,270	3,996	7,274	1,754	675	38
1884..	4,712	1,686	10,966	3,993	6,973	3,875	578	15
1885..	2,949	....	10,970	4,519	6,451	2,202	555	25
1886..	2,742	.. .	10,961	4,847	6,113	2,125	565	27
1887..	3,057	463	10,961	5,299	5,661	2,375	552	23
1888..	2,542	....	10,371	4,715	5,655	2,010	473	23
1889..	2,599	....	10,371	6,031	4,399	2,109	466	22
1890..	6,351	3,400	10,691	6,279	4,412	5,684	459	8
1891..	3,494	413	10,722	6,846	3,876	2,953	375	13
1892..	3,548	100	8,685	5,603	3,082	3,066	324	11
1893..	3,016	....	8,685	6,025	2,660	2,467	280	11
1894..	3,175	....	8,685	5,303	3,382	2,685	280	10
1895..	3,159	....	8,685	5,680	3,005	2,455	280	11
1896..	3,861	613	9,285	5,946	3,339	2,945	280	10
1897..	3,688	....	9,285	6,336	2,949	2,981	301	10
1898..	3,802	....	9,285	6,252	3,033	3,236	301	9
Totals:	70,716	7,734	....	....	....	57,144	10,601	19

tracting from the debt the productive assets of the state, which are given in the column headed "sinking funds and other assets." According to state law no bonds, stocks or securities of any kind may be counted as assets unless actually bearing interest. It thus happens that the state treasury often has valuable assets which cannot be deducted

from the liabilities in the report of the comptroller. This circumstance explains the apparent increase of the net debt from 1897 to 1898. In 1897 the stock of the Washington Branch of the Baltimore and Ohio Railroad owned by the state ($550,000) was paying interest and hence could be subtracted from the gross debt in computing the net debt. In 1898 this stock was unproductive and could not be accounted as an asset. The actual market value of the stock, however, is sufficient to bring the net debt of 1898 below that of 1897.

According to the latest statement furnished by treasury officials, the gross debt of the state amounts to $6,400,000, of which $5,800,000 bears three per cent., and $600,000 three and one-half per cent. interest. The present debt of Maryland is so small that it could probably be wiped out by disposing of the stocks and bonds owned by the state.

Development of Taxation

First Period, 1632-1776. One of the prime motives of colonization in America was the desire on the part of the sovereign to secure additional sources of revenue for himself or for favorite courtiers. This force was not absent from the many worthier motives that led to the establishment of the palatinate of Maryland. The imposition of taxation, therefore, began almost with the planting of the colony itself. In 1641 a " subsedye," and an export tax for the " better support " of the Lord Proprietor, were passed.[1] These were followed at short intervals by the imposition of licenses, tobacco and tonnage duties, export and anchorage taxes, etc., payable for the most part to the Lord Proprietor, but in a few instances in the 18th century, levied for the King of England, notwithstanding the fact that he had expressly renounced the right of taxation in the provincial charter.

[1] Most of the material of this sketch has been taken from the unsigned historical sketch published in the Report of the Maryland Tax Commission of 1888.

Our principal concern, however, in this first period of development—that comprehended between the settlement of the province and the outbreak of the Revolutionary War—is with the direct taxation levied for the payment of the public expenses. Such taxation was almost invariably voted according to the fund system, levied by "even and equal assessment" upon every poll, irrespective of wealth or ability, and paid in tobacco. The "subsedye" of 1641 provided that every freeman and free woman and every servant belonging to any one out of the Province, should pay fifteen pounds of tobacco for every person over twelve years of age belonging or residing in his or her family.

In 1642 the expenses of the burgesses and officers of the General Assembly were levied upon the respective hundreds which they represented. At first this constituted the principal public charge and the only valid excuse for direct taxation; but as the population and importance of the palatinate grew, additional levies were made. In 1650 every freeman was assessed four pounds of tobacco and cask for the "Muster Master Gen'rall's ffee"; in 1662 twenty-five pounds of tobacco *per capita* were voted for the support of the Lieutenant General; in 1692 forty pounds of tobacco were levied upon each freeman for the maintenance of the clergy, and in 1756, after a bitter struggle, a land tax was imposed.

The origin of the present fund system is here clearly seen in the gradual development of public functions. As the sphere of state activity grew, additional levies were made for every new expense. Each hundred paid the expenses of its burgess, the levy being made by two inhabitants selected by the freemen of the hundred and the tax collected by the sheriff. These levies were made without regard to wealth or ability to pay.[1] With one or two exceptions the archaic mode of levying by poll was strictly adhered to, and the injustice of this procedure led to the

[1] See, however, the acts of 1642 and 1756; *loc. cit.* pp. cxiii and cxxviii.

insertion in the first state constitution, of that important article which will be considered hereafter: "The levying of taxes by poll is grievous and oppressive, and ought to be abolished; paupers ought not to be assessed for the support of the government."

Second Period, 1776-1841. The second period in the development of taxation in Maryland begins with the Revolutionary War and extends to 1841, when the disastrous experiments with internal improvements necessitated a reconstruction of the system of taxation. In the interval between the fall of the proprietary government and the creation of the state government, the Provincial Convention resorted to still more archaic forms of taxation than those which had so embittered the people. Contribution lists were passed from hand to hand and the citizens "invited" to come to the aid of the new democracy. Refusal to contribute was treated as a declaration of Toryism and the names of the stiffnecked recalcitrants were advertised for universal opprobrium. After the inauguration of the state government in 1777, vigorous fiscal measures were taken: new licenses were required, an income tax and a heavy property tax were levied, and an efficient machinery of assessment and collection was devised. The era of modern taxation had set in.

Direct taxation for state purposes was, however, of short duration. When the military demands of the war had ceased, the property tax tended to disappear and after 1812 was only levied five times, and then for small amounts. The public expenses were paid by the receipts from licenses, most of which date from this period, and from fines, taxes on transfers, etc.[1] In the few levies that were made, corporations were taxed exactly like individuals. It was, however, customary to impose a franchise tax upon banks, usually 20 cents on each $100 of paid-up capital.

During this period, great pains were taken to equalize

[1] The notorious stamp tax upon bank circulation was imposed in 1817.

the assessments of certain kinds of property. Silver plate was valued at the same rate per unit of weight throughout the state; there was a fixed rate for the valuation of land in each county and the state tax upon real estate was apportioned among the counties in relative proportions determined by multiplying the several county rates by their respective amounts of taxable land. Until the outbreak of the Civil War slaves were assessed at uniform rates determined by age and sex. Except with respect to slaves, all these attempts at equalization were abandoned in the act of 1841.

The most important feature of this period, perhaps, is found in the development of the local organs of taxation. The regulation of local taxation had originally been vested in county boards called Levy Courts, Commissioners of the Tax, etc. These boards were appointed by the Assembly or by the Governor and the Council, and in the beginning had no authority to levy local taxes unless specifically authorized by the legislature. During this period there was a continuous growth in the direction of local home rule and by the end of the period the two boards mentioned had been consolidated into the Board of County Commissioners, the members of which were elected by the votes of the county and were clothed with the general powers of levying taxes and revising assessments which they now possess. The corresponding board for Baltimore City, the Appeal Tax Court, was not created until 1841.

From 1826 until 1841 no property tax worthy of notice was levied by the state. At the end of the second period, it had become evident that the policy of internal improvement was a colossal failure, and the people were confronted with the alternative of repudiating the debt or submitting to onerous taxation. Fortunately the latter plan was accepted, and the burdensome act of 1841 was passed. It aroused a storm of opposition. In seven counties the tax was not levied and collectors were not even appointed. It was not until 1844 that the act could be put into general operation.

Third Period, 1841-1898. Details of the growth of taxation in the last period, 1841-1898, are presented in the succeeding pages. In brief, this period is marked by the abandonment of "equalization"; by the extension of exemption; by the differentiation of corporation taxes; by a decline in the relative importance of license taxes; by the addition of inheritance, mortgage and other new taxes, and by a firmer application on the part of the courts of Article XV of the Declaration of Rights.

General Property Tax

Rate, Levy and Collection. The first real property tax in Maryland was imposed in 1756. The first general property tax was levied in 1777. The rate of the general property tax since 1888 has been 17¾ cents on each one hundred dollars of assessed valuation. The rate is made up as follows:

10½ cents for maintenance of the public schools.
2 cents for the purchase of free school books.
4⅛ cents for the redemption of outstanding debt.
$\frac{5}{16}$ cent for the redemption of the insane asylum loan.
$\frac{3}{16}$ cent for the redemption of the penitentiary loan.

Taxes are levied by the county commissioners of the several counties and by the mayor and city council of Baltimore City before the third Tuesday of April, and are due on or before the first day of January next succeeding. Tax collectors are appointed by the above boards and are paid a per centage of their collections, such remuneration not to exceed five per cent. of the annual collections in the counties, nor two per cent. of the annual collections in the city of Baltimore. The following deductions for prompt payment are allowed: five per cent. if paid before September 1; four per cent. if paid before October 1; three per cent. if paid before November 1. Taxes in arrear bear interest at six per cent., are liens upon property, preferred debts in the settlement of estates, and may be collected by the ordinary processes of distraint and attachment.

One of the salutary provisions of the Maryland law is the levy of local and state taxation upon the same basis. While assessors are appointed from the assessment district which they are to assess, the office is not elective, and these provisions tend to prevent much of the inequality between county and county which might result if separate assessments were made for state and local purposes, or if the assessors were elected by popular vote. Whatever inequalities of valuation exist, appear not between different territorial units, but between the different classes of property. One exception to this statement, however, must be recorded. Land in Baltimore City is undoubtedly assessed higher in proportion to its real value than in the counties. This is due to the peculiar ground rent system of Baltimore, and is intensified by certain exemptions granted to residents of those suburbs of Baltimore included in the "Belt." The latter exemptions, however, will largely disappear in 1900.

Another noticeable feature is the stability of the tax-rate; it has varied only one cent in twenty years. During the period 1876-1896, the assessment did not vary greatly either in character or severity, so that the burden upon property—if such a concept be of any service—has been practically unchanged throughout. The benefit of a stable rate is unquestioned; whether this stability is real, however, is open to question. One assertion in favor of its reality can be safely made: the rate has not been preserved by paying current expenses with loans which accumulate as funded debt. On the other hand, there has been a noticeable increase in the number of taxes and in the rates of the various corporation taxes. The general burden of taxation is greater than it was twenty years ago, but it is more equitably distributed. Taken all in all, the stability of the property rate is a favorable feature of the system and the habit of maintaining it unchanged has had a wholesome influence upon the legislature. It is now a political necessity making for economy in expenditures and restraining the hasty

extension of state activity. The desirability of such restraint is unquestioned as long as the character of our General Assembly remains unchanged.

Taxable Forms of Property. The property tax is the essential commonwealth tax in Maryland. The Declaration of Rights asserts that every person ought to contribute his share of the public taxes in proportion to his actual worth in real and personal property. The property tax is thus a constitutional requirement and if strictly enforced would permit of no exemption. Nevertheless, all sorts of exemptions have been granted, the courts reserving the right to annul the exemption if it appears contrary to a beneficial public policy and insisting upon a strict interpretation of all acts of exemption. The question as to what property is taxable will be best answered by an enumeration of the persons and property exempt.

Persons assessed for less than $100 and the following classes of property are exempt: United States bonds, stocks, or evidences of indebtedness; property of the United States; property of the state; property of any county; property of any incorporated city or town; churches; the furniture, grounds and parsonages of churches; grave-yards and cemeteries not conducted for profit; crops or produce in the hands of the producer or his agent; provisions and fuel held for consumption; tools and implements of mechanics or artisans, worked exclusively by hand; farming implements worth less than $300; wearing apparel; fish in the hands of packers and not sold; hospitals, asylums, charitable or benevolent institutions with adjacent grounds not exceeding forty acres; buildings, furniture, equipment, and libraries of incorporated educational or literary institutions with adjacent grounds not exceeding forty acres; personal property of corporations whose shareholders are subject to taxation; shares of stock in railroads worked by steam and subject to gross-receipts tax; book-accounts, bills receivable, and evidences of such debts held by persons engaged in commercial business.

The list quoted above is taken almost verbatim from the official tax-list. It should be stated in addition that money and bank accounts are not taken into account in estimating taxable wealth. Ground rents are also exempt. There are a few other important exemptions which will be noted in the section devoted to corporation taxes.

There has been much discussion in Maryland concerning the exemption of church and educational property. Conservative writers have complained that rich churches which spend the proceeds of their large endowments in ostentatious forms of worship, and so-called benevolent institutions whose ends are largely personal and exclusive, escape taxation, while the small property holders of Baltimore City, for instance, are paying a gross public charge of two and a half per cent. upon their little accumulations.

The question is a delicate, probably an unimportant one, and is best left perhaps to the instincts of the people. In deciding the question many states have effected a compromise by exempting the property of such institutions within certain limits; in Maryland, for instance, no taxes are paid on landed property which does not exceed forty acres. Assuming that the principle of exemption within certain limits is correct, it seems that a value limit would be far more equitable. Forty acres may be worth any amount from forty dollars up to four hundred thousand dollars, and the same is true of the plant and buildings of fraternal orders, churches, benevolent institutions, etc. The wishes of the people in this matter, so far as they can be discerned in past legislation, would be better carried out by assessing the institutions and then exempting them within certain limits—$20,000 or $30,000 perhaps.

To the present writer there seems no logical line of division between the richer and poorer institutions of the kinds named. There may be a good reason why benevolent and fraternal institutions should be taxed and churches exempt; but it is difficult to see why a church with one hundred members and ten thousand dollars' worth of prop-

erty should be exempt while another church with one thousand members and one hundred thousand dollars' worth of property should pay taxes. Neither should contribute, or both.

Commercial houses pay taxes upon their stocks of merchandise and no deduction for debt is allowed. The exemption of book-accounts has been permitted only since 1896. The insertion of this provision in the list of exemptions accomplished a very desirable reform. The abstract justice of allowance for debt is seldom questioned. On the other hand, it is just as unquestionable that such exemption breeds a host of abuses. Assuming that in the long run the book-accounts of commercial houses will equal their debts, the exemption of book-accounts affords a practical mode of deducting debts without inviting abuse. There is no inducement to manufacture book-accounts for the pleasure of having them exempted. The passage of this law has also removed a large amount of deception—to avoid the harsher term " perjury "—since before its passage practically nobody listed book-accounts.

Assessment. The machinery of assessment consists of (1) a State Tax Commissioner who is appointed by a board consisting of the governor, treasurer and comptroller, and who is charged with the general supervision of assessment, and, in particular, with the assessment and management of the corporation taxes; (2) boards of county commissioners in the respective counties, empowered to hear appeals and to revise valuations; (3) the Appeal Tax Court in Baltimore City, clothed with like powers; (4) a corps of seven permanent assessors in Baltimore City appointed by the mayor and city council. In addition, the clerks of the courts, registers of wills, and the commissioner of the land office render special services for which they receive special remuneration in addition to their regular salaries. These services consist principally of the collection of the inheritance, mortgage, and executors' commissions taxes, and in notifying the appeal boards of transfers and alienations of real property.

X 710846

There has never been any provision for general periodic assessment in Maryland. Since 1812 there have been only five general assessments. The county commissioners and the Appeal Tax Court of Baltimore are directed to revise the valuations of real property every two years, and the reassessment law of 1896 provided for a biennial listing of personalty. But this law was repealed soon afterwards, and in 1898 the reassessment of personalty was made only in Baltimore City.

The method of appointing the appeal boards is important because of its bearing upon the uniformity of valuation throughout the state. The county commissioners are elected by ballot. While this mode of election may operate to make the commissioners unduly susceptible to the interests of their constituents, the defect is partly remedied by the fact that the county revenue must be raised on the state assessment. There seems to be no remedy for the evil mentioned above.[1] The possibility of inequality in assessment between county and county is not due to the method of choosing the appeal boards; it is inherent in all *ad valorem* taxation. Elect the appeal boards by popular vote and they are unduly influenced by the interests of the men who vote for them. If they are appointed by the governor they are unduly influenced by the members of the political party to which they belong. This has been illustrated again and again in Baltimore City. The nearest approach to a remedy would probably be found in a constitutional provision requiring boards of revision and appeal to be appointed by the governor and made up of an equal number of members from the two leading political parties. To accomplish this change in the counties would be difficult, since the boards of county commissioners constitute the general governing bodies in the counties, and as such, should be elected by popular vote. The Appeal Tax Court of Baltimore, however, is appointed by the mayor and

[1] As is so graphically shown in Mr. Benton's paper, the remedy is certainly not to be found in state boards of equalization.

second branch of the city council, and there would be no difficulty in the way of making this board bi-partisan. It is not only desirable that this board should be bi-partisan but past experience has shown that it is absolutely necessary.

In the assessment of 1896 the power of altering assessments was vested in Baltimore in temporary boards of control and review. These boards were appointed by the governor and consisted of three members, one of whom, the law provided, "should belong to the political party which casts the next largest number of votes at the last general election in the State." The assessors in this assessment were in main appointed by the governor.

The state—excluding Baltimore City—was divided into fifty-seven assessment districts. In each of these assessment districts the governor appointed two assessors-at-large, who were selected from the two leading parties from nominations made by the state central committees. The county boards appointed one assessor from each election district, and the latter, in conjunction with the two assessors-at-large, assessed the election district from which he was appointed. In Baltimore all the assessors were appointed by the governor. Assessors were required to be registered voters, taxpayers, and residents of the county or city for which they were appointed for at least two years before the appointment. These provisions, together with the peculiar position of the Republican party, which was newly victorious and on probation, conspired to produce a relatively creditable assessment.

In the act of 1896 provision was made for a biennial assessment of personal property; but in 1898, as already stated, this assessment was made only in Baltimore City. The assessors were appointed by the Appeal Tax Court, and as no provision for minority representation was made, the appointments were greatly influenced by political motives.

The assessment was a failure. "The members of this

court are not favorably inclined to the biennial assessment of personal property," wrote the Judges of the Appeal Tax Court of Baltimore in their annual report for 1898. "The gain is not sufficient to warrant such frequent visits to the homes of our citizens, and the annoyance which it gives them to recount and schedule their personal possessions. A fraction of the time and money spent in that direction, if devoted to the revision of the property already on the tax-books would secure as full results as those now accomplished by going over the ground anew every two years." In the last few days the Board of Estimates of Baltimore City has confirmed this opinion.

There is no reason to complain, as the tax commission of 1888 did, that general assessments are so infrequent in Maryland. The annual or biennial assessment is a troublesome and costly proceeding which benefits nobody but the political hanger-on who is appointed assessor. The assessment of 1898 in Baltimore City cost more than $30,000, while it had practically no effect in changing the taxable basis. There can be no doubt of the wisdom of the recommendation that a permanent corps of trained assessors be substituted for the biennial assessment of personalty.

Valuation. In listing and valuing property each taxpayer is suplied with a printed form upon which he is directed "to specify as far as may be practicable" the amounts of the different kinds of property which he owns, or manages as trustee, guardian, etc. After having enumerated his property he is directed to enter opposite each item his own estimate of its present value. The property so described must be valued "at its full market value without looking to a forced sale." Opposite the owner's valuation is placed the valuation of the assessor. Real estate and houses are described and assessed on another printed form, and the valuation of the two is kept separate.

"For the purpose of securing a full disclosure of all taxable property," the State Tax Commissioner is authorized to print on the blank forms "such interrogatories as

he may deem proper." The assessors are not at all inquisitorial in their work and until now the Tax Commissioner has made scant use of his privilege of interrogation. The only printed questions besides those mentioned concern the amount of property owned in the preceding year, the assessment thereon, and the amount of insurance carried. The last question has aroused some opposition from business men who quite generally refuse to answer it to the assessor. The law, however, clothes the assessors with the right to administer oath, and they are authorized to propound "any question which they may deem necessary to enable them to ascertain the location, kind, and character of the personal property in question." Personal property is enumerated under ten heads, and the owner's valuation is almost invariably accepted if he shows any disposition to be fair in the matter. There is some reason to believe that in the counties at least better results would be reached if a more extensive list of inquiries were used.

The boards of county commissioners and the Appeal Tax Court in Baltimore, act as permanent boards of appeal and revision. There are no other boards of equalization in Maryland. The capital stock of Maryland corporations is assessed by the State Tax Commissioner, and an appeal from his valuation lies to a board composed of the Comptroller, Treasurer, and Tax Commissioner. Railroads pay state taxation upon gross receipts alone. The amount of these receipts is determined by the Tax Commissioner. Railroads pay local taxes upon real and personal property, which the ordinary assessors of the various local bodies assess.

Bonds of Maryland corporations are assessed to the individual owner. For almost fifty years the taxes upon such bonds were collected from the corporations, and by them charged to the accounts of the individual owners. But all bonds in Maryland are now assessed to the individual owner at their market value, though it is provided that "such upon which no interest shall be paid shall not

be valued at all." Upon this valuation the regular rate of state taxation is paid. Local taxation upon this valuation is, however, limited to 30 cents on the $100. Shares of stock in corporations outside of Maryland are valued in the same way and pay only 30 cents upon the $100 as local taxation. The explanation of the changes noted is simple. Many corporations do not know the residences of their bondholders and it is illegal to tax bonds of Maryland corporations owned and held outside the state. The limitation of local taxation upon bonds and stocks of foreign corporations owned in Maryland was made with a view of keeping within the state a desirable class of wealthy citizens, and of reducing the amount of double taxation.[1]

Personal property in Maryland is assessed to the owner at his residence, which is held to be in the district where he resides for the greater portion of the year. Real property or personal property permanently located is assessed at its situs. Bridges forming part of the roadbeds of railroad and turnpike companies, are valued at the same rate that any other equal portion of such roadbed is valued. Special provision is now made in Maryland for the valuation of distilled spirits in the hands of distillers or proprietors of bonded warehouses. Such spirits are assessed and valued by the State Tax Commissioner, and not by the local assessors. Upon his valuations—reported to the proper local authorities—the ordinary property taxes are imposed. Where the distillery or warehouse is owned by a corporation with capital stock divided into shares, the assessed value of the distilled spirits which they own and have paid taxes on, is taken into account as a credit in assessing the capital stock.

---

[1] Since the enactment of this limitation of local taxation upon bonds and stock of foreign corporations, the national banks located in Maryland have refused to pay more than thirty cents per $100 on their capital stocks, claiming that by the terms of the federal statute permitting the taxation of national banks, they should be given the most favored terms accorded to "other moneyed capital." The district court has recently decided against the banks.

Critical Suggestions. It is unnecessary to dwell upon the inherent defects of the property tax. In Maryland, as everywhere else, the great burden of taxation falls upon land; a large amount of personalty escapes; and small property holders are overtaxed, in comparison with the large property holders whose bills are considerable enough to enable them in some measure to dictate their own terms, and also in comparison with the immense number who pay no taxation at all in virtue of the $100 minimum. In the opinions of those best acquainted with taxation in Maryland, real estate in the counties is assessed at a rate varying from fifty to one hundred per cent. of its true value. In Baltimore City small holdings are assessed at their full value. Large landowners are usually able to make some compromise by which, to say the least, they obtain a more favorable valuation. On the whole, real property is fully assessed in Baltimore.

The most serious defect of the property tax is the escape of personalty. Tax officials assert that there is no mode of reaching private securities and that intangible wealth in general is not listed. Personally I am inclined to believe that the escape of personalty, in Maryland at least, is exaggerated. The reasons for this belief follow:

I. The large ratio which the assessed value of personalty bears to the total assessed value of real and personal property. In 1897 real estate and improvements were assessed at $455,000,000, personal property at $196,000,000. The personal property assessed is thus about 43 per cent. of the realty and about 30 per cent of the total wealth of the state.

I am not at all willing to admit that the personal property owned in Maryland and subject to taxation is very much more than 43 per cent. of the realty and 30 per cent. of the total wealth. Definite facts in the matter are hard to obtain, but taking into account the immense amount of personal property which is not subject to taxation, I am inclined to infer from these figures that the personal property of the state is assessed nearer its true value than real prop-

erty. A large majority of the persons assessed for more than $100, have, I believe, the greatest portion of their wealth invested in houses or land. The first impulse of a thrifty man who has accumulated a little, is to invest his savings in house or lot, or both. And in the aggregate, those who have accumulated a little are of more importance than those who have accumulated large fortunes and have the major portion of their wealth invested in securities.

II. The immense amount of personal property which is not subject to taxation. A large portion of the personalty which critics have in mind when they condemn the property tax because of the escape of personalty, is legally and justly exempt. The realty exempt by law is insignificant; the amount of personalty exempt is enormous. Subtract from the total personal property of the community, all cash in hand, all mortgages, bank deposits, bonds and all other evidences of indebtedness issued by the United States, book accounts and all evidences of such indebtedness, the stock debt of Maryland, the stock debt of Baltimore, and that portion of the capital stock of every corporation which is represented by these securities; exempt every individual, the actual *market value* of whose property is less than $100,[1] the tools of artisans, the crops and implements of farmers, wearing apparel, jewelry habitually worn, provisions and fuel for consumption, the furniture of churches, the libraries and laboratories of educational institutions, the paraphernalia of lodges; deduct besides, ground rents, the personal property of corporations, shares in national banks located outside of Maryland, the capital stock of domestic building associations, that portion of the capital stock of corporations which represents land and investments in other Maryland corporations, that portion of the capital stock of railroads which is represented by land, roadbed and bridges, and the wonder is not that the remaining personal property constitutes only thirty per cent. of all property, but that it

[1] Such property is practically all personal, since no one who owns land, owns less than $100 worth.

constitutes as much as 30 per cent. The credits or claims to a given mass of material property may be multiplied indefinitely. This reduplication of securities increases with the development of trade and commerce. Writers have dwelt upon this increase of personal "property" without considering the fact that it is an ideal of the law, imperfectly realized it is true, to exempt the shadow where the substance is taxed. The result of the multiplication of credits is the multiplication of exemptions.

The critics of the property tax have been over-anxious to gather illustrations and proofs of preconceived notions. It is acknowledged that the amount of personalty has increased in the last thirty years. It is just as true, however, that the need of public revenue has increased, and that the vigilance of tax officials and the morality of the average citizen have not relaxed. When under these circumstances the assessment rolls show that realty has increased 125 per cent. while personalty has increased but 8 per cent., as they did in California for the interval 1880-1896, the reasonable course, it seems, would be to search for other causes than the degeneration of the public conscience and the complete breakdown of the property tax.

III. The first and most comprehensive explanation of the relative decline of personalty is the improvement which has taken place in the tax laws. There is no doubt that in the last thirty years an immense amount of double taxation has been remedied either by legislative enactment or by court decision. Twenty-five years ago both the property and the capital stock of corporations were assessed at their full market value.[1] In 1877, however, the Court of Appeals decided (48 Md. 188) that this method of assessment involved double taxation, and the legislature, in conformity with the decision, enacted that thereafter the value of the

[1] It is only fair to add, however, that this was done only for a few years in Maryland. I cite the instance for its bearing upon the general aspect of the question: it is probable that in other states the practice continued for a long period.

real property should be substracted from the value of the capital stock. In 1897 the real property of Maryland corporations was assessed at $34,000,000. Under the preceding law this $34,000,000 would have been included in the personalty column, as well as in the realty column.

Prior to 1874 corporations received no credit for investments in other Maryland corporations. At present they are permitted to deduct such holdings from the value of their capital stock. Trust companies, which hold stock debt of Baltimore, for instance, pay no taxes, state or local, upon it, and in addition subtract its assessed value from the value of their own stock. The total amount of such credits in 1897 was more than $6,000,000. Thirty years ago this was listed as personalty. At that time the state also listed mortgages and the bonds of Maryland corporations owned outside of Maryland. All these securities have now been taken from the personalty list. The amount thus exempted is enormous.

To the above list of personal property which has been taken from the assessment rolls in the last thirty years, might be added the book accounts of commercial houses, formally exempted in 1896. It would be useless to go on with this enumeration, as practically no statistics of the relative growth of personalty can be offered. It is submitted, however, that, during the period in which the amount of assessed personalty is alleged to have undergone a relative decline, there has been an extensive growth in the exemption of personalty, accompanied by a qualitative change in the general system of taxation, by which many classes of industry, such as railroads, insurance companies, express companies, have been relieved of the necessity of listing their property, and in lieu thereof, charged with the payment of gross-receipts and other similar taxes. And the greater part of the property of such companies is what would be called " personal."

IV. The fourth reason for the belief that the escape of personalty has been exaggerated, is based upon the few

statistics of assessed personalty that we have. The differentiation of real and personal property in the reports upon the taxable basis, has been introduced only recently in Maryland. In consequence, we are forced to fall back upon the reports of the Eleventh Census. In 1890, according to the section devoted to Maryland in the census report upon "Wealth, Debt and Taxation," the assessed value of real property in Maryland was $411,900,246; that of personal property, $117,594,531. In 1897, according to the last Report of the State Tax Commissioner, real property was assessed at $454,926,856, and personal property at $195,661,081. In the interval 1890-1897, then, the assessed value of personal property increased 66 per cent., while that of real property increased only 10 per cent. Whether these figures are trustworthy, and whether similar results would be obtained from a longer series of years, are questions which I am unable to answer. But the figures, such as they are, do not sustain the contention that a major proportion of personalty is escaping.

I have no desire to be taken as a champion of the property tax. The escape of personal property, particularly private securities, is a serious matter which cannot be lightly dismissed. On the other hand, it is evident that the magnitude of such evasion has been exaggerated. While one can scarcely find a reference to the property tax unaccompanied by some startling illustration of the escape of intangible property, these illustrations contain no reference to the increasing exemption of bonds and stocks due to decisions of the courts, no account of non-interest bearing and other unproductive securities which are legally exempt. A large proportion of the securities which are said to "escape" are mere liens upon tangible property upon which the proper taxes are paid.

The worst defect of the property tax in Maryland is the absence of any provision for the exemption of debt. Whatever be the practical difficulties of debt exemption, nothing short of that reform will ever satisfy our innate ideas of

justice. That a man holding an estate worth $50,000 and mortgaged for $40,000 should pay both state and local taxation upon $50,000, is wrong, ethically and economically.

There is a practical remedy for this evil which would, I believe, do away with a large amount of double taxation and at the same time bring to light the greater portion of those securities which now escape the assessor. The creation of a debt implies the creation of a corresponding credit. Exempt debts on the conditions that the debtor bring acknowledgments of such debts from the corresponding creditors and that such creditors are taxable, and an immense amount of intangible property will be brought to light. This expedient would necessitate some sort of interstate agreement by which cognizance could be taken of debts contracted between citizens of different states. An interstate agreement of this kind does not seem hopelessly chimerical.

License Taxes

Licenses in Maryland date from an early period, although the most important were first levied in the second decade of this century. In 1780 the marriage license was imposed, and an annual tax of £15 upon billiard tables was levied in the same year. In 1819 the broker's license was introduced in the form of a tax of $500 per annum on every broker dealing in bank notes or lottery tickets. The trader's license, auctioneer's license and ordinary's license date from 1827. From this time until about twenty-five years ago the state derived its principal revenue from this source. During the twenty-two years, 1877-1898, the various licenses yielded about thirty-three per cent. of the total tax-receipts.

Forms of License Taxes. Besides the quasi-license taxes to be treated with the corporation taxes, the following license taxes are imposed in Maryland:

(1) Auctioneers in Baltimore City pay from $450 to $750, according to the amount of sales. In the counties,

auctioneers pay the trader's license upon the value of the stock on hand. Receipts in 1898, $3822.00.

(2) Brokers pay special charges ranging from $100 for exchange, insurance, and pawnbrokers, to $18.75 for grain, coffee, cotton, and sugar brokers. Receipts in 1898, $18,952.65.

(3) Hawkers and pedlers pay from $100 to $200 for each county in which they sell, according as they travel on foot or with horse and wagon. In eleven counties they pay $300 when they travel with a wagon and two horses. Receipts in 1898, $3012.91.

(4) Traders' licenses vary from $12 paid on a stock of $1000 or less, to $150 paid on a stock worth $40,000 or more. Receipts in 1898, $188,879.44.

(5) Billiard-tables. The annual license tax on billiard-tables rented or conducted for a profit is $50. Receipts in 1898, $5604.27.

(6) Liquor-Dealers selling in quantities of more than one pint pay licenses varying from $18 on a stock worth less than $500, to $150 on a stock worth more than $30,000. Dealers taking out an $18 license must pay in addition the trader's license of $12. Receipts in 1898, $10,697.66.

(7) Ordinary-Keepers pay from $25, where the house occupied has a rental value of $100 per annum or less, up to $450, where the house has a rental value of $10,000 or more. Receipts in 1898, $11,877.89.

(8) Saloons and Oyster-Houses in the counties pay $50 per year. Receipts in 1898, $33,044.44.

(9) High Liquor license. In Baltimore City and Ellicott City all liquor-dealers, saloon-keepers, etc., pay an annual license of $250. Receipts in 1898, $546,880.14.

(10) Oyster-Dredger's license. Owners of boats engaged in dredging oysters pay $3 per ton annually. Receipts in 1898, $35,693.75.

(11) Oyster-Tongers pay from $2 to $5 a year, according to length of boat. Receipts in 1898, $12,925.24.

(12) Oyster-Canners pay one-tenth of one cent upon

every bushel of oysters shucked. Receipts in 1898, $4853.92.

(13) Oyster-Measurers pay ten cents per hundred bushels measured. Receipts in 1898, $909.20.

(14) Net-Fishing. Three cents for each square fathom of seine, and one cent for each square fathom of gill-net. Receipts in 1898, $204.85.

(15) Commercial fertilizers. Every manufacturer or importer of fertilizers is required to pay $5 for the first 100 tons sold, and $2 for each additional 100 tons. Receipts in 1898, $9150.00.

(16) Exhibition licenses. Theatrical companies, shows, circuses, etc., pay, in addition to local licenses, $30 per year, or $1 per exhibition, in the counties. In Baltimore City theatrical exhibitions and circuses pay to the state $3 each night; other exhibitors, $10 per week. Receipts in 1898, $3347.71.

(17) Cigarette license. To sell paper-wrapper cigarettes, dealers are required to pay a special license of $10 per year. Receipts in 1898, $11,160.20.

(18) Race and Fishery. To sell liquor at horse-races and fisheries, special licenses are issued which cost $4.50 and $6.50 respectively. Receipts in 1898, $41.80.

Critical Suggestions. Judged by McCulloch's empirical standard, the license taxes are the best taxes we have. They are easily and cheaply collected, very productive, and cause little irritation or complaint. Considering how completely the faculty or *quid pro quo* theory fails to explain some of our most satisfactory taxes (as, for example, the inheritance tax), there seems no reason why we should advocate the abandonment of license taxes because they have no apparent philosophical basis. Many of these licenses, notably the high liquor, cigarette, and exhibition licenses, are sumptuary measures. The first of these has had a most beneficial influence in Baltimore, and there seems little reason why we should not regulate by taxation if the measure of regulation desired by the public can be thus secured. The

traders' licenses are not excessive and it is improbable that prices are appreciably affected by them. If the number of such fixed charges could be increased without causing more injustice or irritation than the average license of the present, the increase would seem, *pro tanto*, a most desirable substitute for the property tax.

Many of the licenses are specially devoted to the interests of the particular branch of trade from which they are drawn. Thus, most of the oyster licenses are imposed for the sole purpose of maintaining the supremacy of Maryland in the oyster trade. The same motive explains the fertilizer license. Baltimore is now the largest manufacturing center of the fertilizer industry in the country. In order to keep the standard of these goods high this license is imposed and the proceeds devoted to the maintenance of a chemical laboratory where the inspection and analysis of fertilizers is constantly going on.

In glaring contrast to most of the licenses are those required of pedlers, and auctioneers in Baltimore. The latter occupation is a virtual monopoly in Baltimore, only eight licenses being issued in 1898. The law provides that auctioneers shall be appointed by the Governor and shall pay $450 per annum if their sales—excluding real estate and houses—are less than $150,000. Where such sales amount to more than $150,000, the license costs $750. Whether this tax meets the approval of those who can afford to pay it, is not plain. But it certainly renders one legitimate vocation inaccessible to the poorer classes and undoubtedly diminishes the revenue that would accrue from this source if the licenses were of normal amount.

The excessive license charge required of pedlers furnishes another instance of explicable but unjustifiable trade antipathy. Scarcely a session of the General Assembly passes without these charges being increased or extended over counties where formerly they did not apply. If auctioneers and pedlers thrive so well and it requires such an effort to repress them, it is only a proof that they are

performing some economic function better than the ordinary traders, and they should be encouraged, not discouraged. The excessive pedler's license is due in some degree to a survival of the Jew-baiting instinct. This charge is undoubtedly aimed at the industrious Jewish itinerant who peddles notions, since hawkers of fish and green provisions are exempt.[1]

Licenses are granted by the clerks of the Circuit Courts. Sheriffs and constables are enjoined to make diligent search for violators of the law and informants in every case are given one-half of the penalty imposed. The law is generally well enforced and there are no wholesale evasions. Some of the penalties provided exhibit peculiar prejudices similar to those noted in the case of pedlers; for example, a penalty of $500 is imposed upon people doing a broker's business or keeping a public billiard-table without a license, while the pecuniary penalty for selling liquor without a license varies from $50 to $200.

The more serious problem to be solved in connection with licenses is not whether they should be retained; but whether their proceeds should go to the state or the local division in which they are collected. The state retains one-fourth of the proceeds of the high liquor license collected in Baltimore. It retains the entire proceeds of the traders' licenses collected in Baltimore—nearly $104,000 in 1898. Two questions are frequently asked by the citizens of Baltimore: why should any of this money go to the state at all, and, if the state has a just claim to the proceeds of license taxes, why should it take a part in the one case and the whole amount in the other?

The answer to the latter question is not difficult to find.

[1] Pedlers pay $100 to travel afoot, $150 to travel with one horse and wagon, $200 with two horses and wagon. They are restricted to one county for each license, are adjudged to be selling without license if they do not have the license certificate with them, and a reward of $10 is offered to any person who secures the conviction of a pedler selling without license. In contradistinction to this the traveling salesman pays nothing and the saloon-keeper only $50.

The city of Baltimore in so far as its liquor trade is concerned, is subjected to heavier taxation than other local districts. A portion of this taxation, about equivalent to the amount of taxes collected from liquor-dealers in other parts of the state, is retained by the state in order to place Baltimore upon an equality with other local divisions in this respect. The justice of this apportionment must be acknowledged if it be decided that the state has a better claim to the proceeds of licenses than the several local divisions.

The Mayor of Baltimore has recently criticised the practice of using the traders' and other licenses for state purposes. The public expenses entailed by traders are borne by the city; the logical fund for the payment of these expenses, he claims, is that derived from the licenses imposed upon traders.

The question involved is clearly one of equity, to be decided by reference to the general principle in accordance with which license taxes are imposed. If licenses are paid in return for and in proportion to public services rendered, the proceeds, speaking generally, should go to the local districts in which they are collected. If they are payments for the grant of public privileges, the proceeds should go to the state.

In origin, the license tax is closely akin to the modern franchise tax and appears, in its historical aspect, as the price of the privilege to do business; in Mississippi, for example, the tax is still known as the privilege-license tax. The grant of such privileges lies wholly within the province of the sovereign power; it is not within the ordinary power of a municipal corporation either to authorize, prohibit, or circumscribe by license the pursuit of a calling or trade not inimical to the public health, morals, or safety. In consequence of these facts, the payments for the grants mentioned should be retained by the power which conferred them; and this power is the state. This interpretation of the nature of the license tax is further supported by

the difference in the burden imposed upon the several kinds of business. The broker and the pedler have no extensive stocks or establishments necessitating the maintenance of police and fire departments, yet they pay higher licenses than ordinary traders. Moreover, the license charges are substantially uniform throughout the state, irrespective of the degree of protection afforded by the various local governments.

It is admitted that the above is an ultra-theoretical view of the nature of the license tax, but the distribution of taxation among individuals and the distribution of the proceeds of taxation among the several governmental divisions are problems which are essentially theoretic. It is also admitted that there are many weighty arguments which may be adduced in support of the justice of the Mayor's plea. But in the opinion of the writer, the distinctive features of the license stamp it unmistakably as a state tax as distinguished from a municipal charge.

Corporation Taxes

Under the above heading the following taxes have been grouped:

(a) Tax on Gross Receipts of Corporations.
(b) License and Premium Tax on Insurance Companies.
(c) Tax on Capital Stock of Corporations.
(d) Franchise Tax on Savings Banks.
(e) The Bonus Tax on Corporations.
(f) The Foreign Corporations Tax.

In 1898 the tax on the gross receipts of corporations yielded $191,638.98; the license and premium tax, $149,039.10; the tax on capital stock, $140,673.11;[1] the tax on savings banks, $32,353.70; the bonus tax, $5,005.42. No returns from the foreign corporations tax have been published as it was not imposed until 1898.

Tax on Gross Receipts. Until 1894 there were no taxes

[1] The tax on Baltimore City stock is included.

on gross receipts in Maryland, save those on railroads, first imposed in 1872. The present taxes which were passed in 1896, are as follows: "a state tax as a franchise tax" is levied upon the gross receipts of all steam railroad companies doing business in the state, to the amount of eight-tenths of one per centum on the first one thousand dollars per mile of gross earnings, or on the total earnings if they are less than one thousand dollars per mile; one and one-half per centum on all gross earning above one thousand dollars per mile and up to two thousand dollars per mile; when the gross earnings exceed two thousand dollars per mile, two per centum on all earnings above that amount.

All oil and pipe-line companies, and all title-insurance companies doing business in the state pay a franchise tax of one per cent. on their gross receipts. Every telegraph or cable, express or transportation, telephone, parlor-car, sleeping-car, safe-deposit, trust, guarantee and fidelity company, doing business in Maryland, pays two per cent. on gross receipts. Electric-light companies pay three-fourths of one per cent. on gross receipts. Electric-construction companies, gas companies, and fertilizer companies pay one and one-half per cent. on gross receipts,[1] with the exception of fertilizer companies, unincorporated firms or individuals engaged in the businesses enumerated above pay the corresponding taxes on gross receipts.

Companies subject to these taxes whose lines lie partly outside the state, pay upon such proportion of their gross earnings as the length of their line in Maryland bears to the whole length of their line. The data required for the calculation of these taxes must be reported to the State Tax Commissioner "in any mode satisfactory to and required by" that official.

The gross-receipts tax is the only state tax imposed on railroads. They pay the local taxes upon their real and personal property. Capital stock is thus wholly exempt.

[1] Only those fertilizer companies pay on gross receipts which are incorporated outside of Maryland.

The boards of control and review and county commissioners made the valuation of real and personal property in 1896, and no conditions were imposed upon them save that of assessing bridges over streams at the same rate as any other equal portion of the road. There is thus no central board charged with the assessment of railroad property. The assessment of rolling stock furnishes something of an exception to this statement. The rolling stock of a road is assessed by the board of control and review or the county commissioners in the assessment district in which the company has its principal place of business. The valuations made by these boards are then reported to the State Tax Commissioner, who adds them together and apportions the sum among the various local divisions according to mileage.

About 80 per cent. of the whole amount of gross-receipts taxes received in 1897 came from railroads. The question arises, do the railroads pay as much upon a just valuation of their property as individuals would pay upon the same amounts? This question suggests the difficult problem of finding some quantitive relation between the value of a railroad and its gross earnings. The Maryland Tax Commission of 1888—following the suggestion of the Illinois commission of 1886—undertook to solve this problem in the following way: It was found that the true net earnings of railway companies were in the long run about seven per cent. of an amount secured by multiplying the gross earnings by five. Starting from the gross earnings they thus capitalized net earnings at seven per cent., and assumed the result to be the value of the railroad under consideration. The indirect capitalization from gross earnings was employed because of the greater likelihood of deception in the return of net earnings.

Railroad statistics show a remarkable connection between gross and net earnings. The net earnings of railroads in the Middle Atlantic States, according to Poor's Manual of

[1] Report of the Maryland Tax Commission of 1888, p. 21.

1898, have been, in the average of the last thirteen years, 33 per cent. of the gross earnings.[1] According to the report of the Interstate Commerce Commission for 1896, net earnings, in the average of the last seven years (for the whole United States), have been 32.88 per cent. of gross earnings.[2] According to the report of the Railway Commissioners of Massachusetts for 1898, the same ratio for the last ten years, for railroads in Massachusetts was 31.06 per cent.[3] These results from three different sources not only resemble each other closely, but the variation of separate returns from the mean is not great. Thus the greatest variation in ten years in Massachusetts was 3.51 (29.53—33.04). We may then assume, taking Poor's figures for the Middle Atlantic States, that net receipts are about one-third of gross receipts.

The Northern Central and the Baltimore and Ohio Railroads have special contracts with the state by which they pay only one-half of one per cent. upon their gross earnings. A great deal could be said about the justice of these contracts and the methods by which they were secured; but these points cannot be discussed here. Excluding these, the other thirty-five roads in 1897 were assessed $111,769.49 upon total gross earnings, which amounted to $6,733,987.11. Computing net earnings as indicated and capitalizing these at seven per cent., we would get $32,066,608 as the total cash value of the roads in question. The regular state tax upon this valuation would be $56,918.22; a little more than half of that actually paid. Considering the risks involved, seven per cent. is not too great a return upon railroad investments. In the opinion of many, however, a higher capitalization should be made, the Ohio commission of

---

[1] Poor's Manual for 1898, p. 38.

[2] Statistics of Railways in the United States for 1896, p. 80. The items *net* and *gross earnings* are not used by the statistician of the commission, but essentially the same information is reported under the terms "Gross Earnings from Operation" and "Income from Operation."

[3] Railroad Commissioner's Report for 1898, p. 64.

1893, for instance, using six per cent.[1] In order to give full weight to the public interests we may capitalize at five per cent. At this rate the value of the roads is $44,893,251, upon which the ordinary state tax at 17¾ cents would be $79,685. As the roads actually paid $111,769, we see that they are paying about $32,000 more than an individual would on property of the same value. So far as the above method of calculation is concerned, we believe it to be substantially accurate. If the railroads are as honest as the average taxpayer, and the net earnings are fairly estimated, there can be no doubt that the railroads are paying at least 1.4 times the ordinary state property tax. The valuation made covers franchises and bonded indebtedness.

Railroads pay local taxation only upon their tangible property. Their franchises thus escape the heavy burden of local taxation. The extra .4 may then be interpreted in one of two ways. It may be taken as a payment for the original grant of the franchises from the state. Franchises are property. If the state transfers such property, it has a right—in fact is compelled—to tax it as other wealth. It may also take its payment for the original transfer of the property in the shape of a tax. If the extra .4 or $32,000 be viewed in this light, the state is getting a fair return for its grants, but the roads are escaping local taxation upon the value of their franchises. If the .4 be regarded as a part payment on account of this local taxation avoided, then the state receives no true franchise tax, and local taxation—which in the average is more than seven times as great as state taxation—is still largely avoided.

From these considerations we might conclude that the railroads were escaping a large portion of taxation in either way we look at the matter. This conclusion must be modified, however, by the fact that the bonds of these roads are assessed to the individual holders resident in Maryland. The capitalized value estimated in the way we have shown

[1] Report of the Tax Commission of Ohio of 1893, p. 53.

includes bonded indebtedness as well as capital stock. If railroads were taxed upon a cash value so estimated, bonds and stock in the hands of individuals would have to be exempt to avoid double taxation. The payment of taxes upon bonds thus necessitates a suspension of judgment upon the question with which we started out. There is no way of discovering how many of these bonds are taxed.

The one conclusion that may be drawn is this: What constitutes equitable railroad taxation is not ascertainable under the present system. It differs too radically from the taxation of individuals to allow intelligent comparison. Two reforms are needed: (a) different kinds of taxes should be devised for railroads; (b) there should be a special commission or commissioners in charge of railroad taxation. The surest way of securing justice would be to make the railroads pay state and local taxation upon a cash value ascertained by capitalizing earnings. If desirable, real estate owned by railroads could be assessed separately and subtracted from this capitalized value, as is now done in assessing the capital stock of corporations. In addition to this a small gross-receipts tax might be imposed as a franchise tax. In 1897 the average rate upon gross earnings paid by the railroads was $1\frac{46}{75}$ per cent. This might be reduced to one-third of one per cent. as an annual rental payment for the franchises.

The necessity for some special official to look after the state's interests in the taxation of railroads is apparent. At the present time the Northern Central has paid no gross-receipts tax for several years, and there is a dispute with this road and the Baltimore and Ohio over the payment of local taxes upon rolling stock. According to the last report of the state tax commissioner, fourteen of the thirty-seven roads in the state owned no rolling stock; reports from three other roads had not been turned in, and the regular apportionment provided for by law had been made for only three roads.

The gross-receipts taxes levied upon other corporations

amounted in 1897 to a little over $40,000, or about twenty per cent. of the total return from the taxes on gross receipts. The latter constitute franchise taxes in the true meaning of the words, as the corporations subject to them pay in addition the ordinary property tax.

License and Premium Tax on Insurance Companies. The first tax of this sort—two per cent. on the premiums of foreign companies—was authorized in 1839. In 1872 the office of Insurance Commissioner was created and charged with the duty of inspecting insurance companies and assessing them for taxation. The present law relating to the taxation of insurance companies was passed in 1894.

Every agent of a foreign [1] insurance company doing business in Maryland is required to pay an annual license tax of $300 plus one and one-half per centum on the amount of premiums actually collected in the state. Foreign companies are also required to register their charters, and to make an annual statement of resources, liabilities, premiums, etc. For both of these registrations a fee of $25 is charged. The companies are also subject to several other minor charges of the same nature, ranging from $10 to $2. In estimating the amount of premiums upon which the tax of one and one-half per cent. is paid, the companies are allowed to deduct the claims or losses actually paid in the state.

This tax only applies to foreign companies. Home companies pay the ordinary corporation tax upon capital stock. This acts as a distinct encouragement to the formation of home companies. The tax is one of the most lucrative levied by the state, the yield in 1898 being nearly $150,000.

Tax on Capital Stock of Corporations. The development of corporation taxation in Maryland has been slow. The collection of taxes upon capital stock at the source began in 1841. In 1847 the duty of assessing such shares was transferred from the ordinary assessors to the county com-

[1] That is, companies not incorporated in Maryland.

missioners. In 1878 this power was vested in a State Tax Commissioner. There have been no essential changes in the law since 1880, save the abandonment of the attempt to collect taxes on the bonds of Maryland corporations from the corporations themselves.

Companies incorporated by, or located and doing business in the State of Maryland pay the ordinary state and local taxes upon their real property. Capital stock is assessed by the State Tax Commissioner. In making these valuations the Tax Commissioner is authorized to examine under oath any person who he is advised has information on the subject, and he is assisted in this work by the fact that every corporation doing business in Maryland is required to file in his office a copy of its charter. The president or other proper officer of every corporation is required to furnish the county commissioners of the several counties and the Appeal Tax Court of Baltimore with a list of all shareholders residing in, and a description of all real property situated in their respective districts. The real property is then assessed at its situs, and a record of this valuation is returned to the Tax Commissioner. The latter is directed to value capital stock as follows: "He shall deduct the assessed value of such real property from the aggregate value of all shares of such corporations, and divide the remainder by the number of shares of capital stock, and the quotient shall be the taxable value of such respective shares both for state and local purposes." This valuation is then communicated to the county commissioners and the Appeal Tax Court of Baltimore. The Comptroller and the proper local collectors then collect the state and local taxes respectively, from the several corporations. Local taxes on the shares owned by non-residents are paid in the county or city in which the corporation is situated. The valuation made by the Tax Commissioner is reported to the respective corporations by the Comptroller. An appeal may be made within 30 days to a board composed of the Treasurer, Comptroller and the Tax Commissioner. Any alteration agreed upon by the Treasurer and Comptroller may be made.

Corporations pay no taxes upon personal property, though it is provided that the valuation of the capital stock shall in no case be less than the full value of the personal property "whether the shares of said stock are quoted on the market or not." Corporations holding stock in other corporations upon which the state tax is paid or payable, may report the same to the Tax Commissioner, who credits the amount of such holdings in making the valuation of the capital stock. Homestead or building associations are exempt from taxation upon their capital stock, to the extent that such shares represent investments in mortgages on real estate located wholly within the state, and executed by members of the association. Savings-banks pay a franchise tax upon deposits in lieu of the tax on capital stock. It is illegal in Maryland to tax capital stock both to the corporation and in the hands of the individual owners.[1]

The tax thus described does not differ from the property tax in its rationale. Capital stock as assessed to corporations corresponds to the personal wealth of individuals. All the assets of a corporation are reflected in the value of the capital stock, so that a large mass of intangible wealth is thus assessed which would probably escape if it were enumerated item by item. It is unfortunate that some similar expedient cannot be employed in the case of individuals. As was pointed out above, the state has abandoned the effort to collect taxes upon bonds from the corporations issuing them. For some years the state tried to tax the whole bonded indebtedness of Maryland corporations and collect the tax from the corporations. In obedience to decisions of the Federal Courts this effort was abandoned, and the state formally exempted non-resident owners of such bonds. In 1896 the corporations were relieved of all obligations in this matter and provision was made to assess the bonds to the individual owners. Local taxation upon such securities is now limited to 30 cents on the $100.

[1] County Com'rs *vs.* Farmers and Merchants Bank, 48 Md., 188.

The tax under consideration is rather a method of collecting the property tax than a distinct corporation tax. Because of this fact, we have included under this head the tax on the funded debt of Baltimore City. Baltimore City pays the regular state tax upon such of its stock debt as is held in the state. The tax paid by the city in 1898 amounted to nearly $49,000. The city pays this tax without subtracting it from the interest due the holders and also exempts the stock from city taxation. Notwithstanding these exemptions, corporations holding this stock can have it subtracted or credited in the valuation of their own capital stock. In consequence, Baltimore City bonds have become a favorite security and large quantities are held by Baltimore banks and trust companies. Considerable amounts are also held by the state for the sinking-funds.

For the purpose of keeping track of the corporations doing business in Maryland, two unimportant corporation taxes have been imposed, which may be mentioned here: (1) The Bonus Tax, upon companies incorporated in Maryland. Every company, upon incorporation, is required to file a copy of its charter with the State Tax Commissioner and pay him a tax of one-eighth of one per cent. upon its authorized capital stock. Every authorized increase of capital stock must also be registered and a like tax paid on the increase. This tax was imposed in 1894 and yields about $5000 annually.

(2) The Foreign Corporation Act was passed in 1898. Grave doubts as to its constitutionality are entertained. It provides that every corporation[1] doing business, but not incorporated, in the state, shall deposit with the Secretary of State a certified copy of its charter, together with a sworn statement from its chief executive officer setting forth the amount of its capital stock authorized, the amount actually issued, the amount of its assets and liabilities, the character

[1] Except telephone, banking, insurance, railroad, electric-light or construction, and oil or pipe-line companies.

of the business to be transacted in this state, and its principal place of residence in the state. A registration fee of $25 is charged upon the deposit of this information and adequate penalties are provided for violation of the act. Any agent presuming to do business without complying with the requirements stated is subject to a fine of $100 for each day of delinquency, and no unregistered corporation is entitled to maintain any action either at law or in equity in the courts of the state. The receipts from this tax have not yet been reported.

Franchise Tax on Savings Banks. Savings banks pay taxes upon their real property like individuals. In lieu of all other taxation they pay a franchise tax of one-quarter of one per cent. upon their deposits. Of this tax three-fourths go to the local authorities and one-fourth goes to the state. The amount of deposits is ascertained from a statement made by the president of the total amount of deposits held on the first day of January.

The Inheritance Tax

The collateral inheritance tax was first imposed in 1845. All estates transferred by deed, or by any kind of a grant intended to take effect after the death of the grantor, are subject to a tax of two and one-half per cent. on every hundred dollars of clear value. Inheritances to mother, father, husband, wife, child or any lineal descendant, and estates valued at less than $500 are not subject to this tax. The tax must be paid by the executor or administrator within thirteen months from the date of administration, before any legacy has been paid.

This tax is one of the surest and most satisfactory taxes in use. Estates must be registered at the recorder's office, and the value must be appraised, for the ordinary purposes of settlement. The tax thus becomes inevitable; a careful and unprejudiced valuation is secured, and collection through the administrator is made certain. He is author-

ized to sell enough property to pay it, if the heirs do not make provisions for payment in the specified time. This tax has been employed in Maryland for more than fifty years with eminently satisfactory results. A study of the returns from the tax for the last ten years shows that there has been no growth, or at least no apparent growth, in the receipts. Taking the exemptions into account, the rate of two and a half per cent. is too low, and there seems no reason why the state should not increase the rate, particularly upon large bequests. Collateral heirs only are affected: those having claims upon the decedent are not touched by the tax. Five per cent., in view of these circumstances, would, perhaps, not be too great on collateral bequests of more than $5000. This tax furnishes the best source of new revenue now left to the state, and even on general principles its rate should be gradually increased from year to year, until a moderate amount of progressivity is introduced. The revenue from this tax in 1898 was $134,279.90.

Tax on Commissions of Executors and Administrators

Every commission allowed to an executor or administrator by the orphans' courts of Maryland is subject to a tax of one-tenth part of the sum so allowed, for the use and benefit of the state. The courts are prohibited from making any allowance for this tax in fixing commissions of administrators, "It being intended that the tax shall be paid out of the said commissions, and not by the estate of the deceased." This is one of those eminently satisfactory taxes for which it is hard to find a sound philosophical basis. It seems to have been occasioned by the feeling that executors' commissions are, as a rule, excessively high. The logical action in this event would be a reduction of the commission and not the imposition of a tax. Taken by itself the tax does not seem sound. If administrative commissions afford only a reasonable compensation for the services rendered,

then the tax is an unjust charge upon administrators. If the commissions are too high they should be directly reduced for the benefit of heirs, not taxed for the benefit of the state. The tax may be partially justified in the latter event by interpreting it as an extension of the inheritance tax. It also might be defended as a license tax on lawyers. But in any event it seems philosophically defective. It has, however, the great empirical virtues of being sure, frictionless, and cheaply collected; its yield in 1898 was $49,875.54.

Excess of Fees

Section 1, Article XV of the Constitution of Maryland, provides that every official in the state (except justices of the peace, constables and coroners) whose pay is derived from fees, shall keep a detailed account of all payments made to him; that a copy of this record shall be sent to the comptroller; and that when the amount of fees shall exceed the salary of the official and the authorized expenses of the office, this excess shall be transmitted to the treasurer.

This tax is rather unimportant as a source of revenue; the yield in 1898 was only $64,363.99. But, as was noted above, it is one of the surest touchstones of economical administration that we have, and that the yield was forty per cent. greater in 1898 than in 1897 is a decidedly encouraging sign of the spirit which is pervading our state government.

Miscellaneous Taxes

Under this head have been grouped the following taxes: Tax on Protests; Tax on Official Commissions; Mortgage Tax.

Tax on Protests. Every notary public is required to pay to the state one-half of all protest fees received by him, (a) in excess of $500 per annum in Baltimore, (b) in excess of $350 per annum in the counties. The amount received from this tax is small and fluctuates greatly from year to

year. For the last twenty years the tax has yielded on an average about $4000 per annum. The yield in 1898 was $1170.

Tax on Official Commissions. This tax consists of certain fees paid by newly-elected officials on receipt of their commissions. These payments are made by all commissioned officials from judges to justices of the peace, and vary in amount from the $300 paid by the sheriff of Baltimore City to the $2 paid by constables. These charges are only imposed upon newly-elected officials, and in consequence the yield varies greatly from year to year. The tax was first imposed in 1844, and in 1898 yielded $7294.10.

Mortgage Tax. Until 1870, with one unimportant exception, debts secured by mortgage were listed and taxed like other securities. The causes which led to the exemption of this important class of personalty are well described in the Report of the State Tax Commissioner for 1884 (pp. x, xi). "At the time of the passage of the Act of 1870, landowners in Maryland were suffering from the terrible effects of the Civil War, an immense debt of the United States was seeking investment at six per cent. interest free of taxation; a variety of railroad bonds and other coupon bonds promising six, seven and eight per cent. interest were offered freely, and other investments were constantly on the market to such an extent that the owners of real property, particularly in the counties, frequently found difficulty in borrowing upon mortgage, while the mortgage debt was liable to taxation." The exemption of mortgages continued from 1870 until 1896, when the present law was passed after a prolonged discussion.

The law of 1896 provides that the mortgagee of every mortgage of record in the state shall pay annually a tax of eight per cent. of the gross amount of interest covenanted to be paid yearly. No covenant for the payment of the tax by the mortgagor is valid if made subsequent to the passage of the act, and every person lending money upon property in Maryland is required to swear that this charge has not

been shifted upon the borrower. One-fourth of the net proceeds of the tax goes to the state; the remainder is retained by the local division in which it is collected. In view of the disproportionate per centage paid for collecting this tax, its influence upon the rate of interest, and the tedious discussion it provoked, it is disappointing to learn that its yield in 1898 was only $6577.53. It is an eloquent illustration of the wastefulness of half-hearted financial measures. The tax should either be repealed or mortgages should be listed at their full market value and taxed like other personal property.

Conclusion

The most fundamental reform that could be quickly accomplished in the financial system of the State of Maryland is the repeal of the fifteenth article of the Declaration of Rights. That article reads: [We, the People of the State of Maryland . . . declare] " that the levying of taxes by poll is grievous and oppressive, and ought to be prohibited; that paupers ought not to be assessed for the support of the government; but that every person in the State, or person holding property therein, ought to contribute his proportion of public taxes for the support of the government, according to his actual worth in real or personal property; yet fines, duties, or taxes may properly and justly be imposed or laid, with a political view for the good government and benefit of the community."

This article, so reminiscent of the fiscal grievances of our colonial forefathers, constitutes the mould within which every system of taxation in Maryland must be formed. " Quaint, antiquated and unintelligible,"[1] it constitutes a perennial source of irritation and a serious menace to tax reform in Maryland, because of the uncertainty which it creates: uncertainty on the part of the legislature as to

[1] A characterization made by the late Mr. Woolford when he was State Tax Commissioner.

what taxes it may impose, doubt on the part of the taxpayer as to what taxes he must pay. The result is litigation which fails to produce any satisfactory interpretation of the article in question.

It is fairly well established that the taxes which must be imposed according to actual worth in real or personal property are direct property taxes. Licenses, franchise taxes, mortgage taxes, taxes on gross receipts, have all been sanctioned by Maryland courts.[1] In general, the latter have been very liberal in the freedom which they have given the legislature, and in one very able opinion the court declared that the several cases, in which this article had been reviewed, establish the principle—and nothing beyond it—"that when taxes are laid directly upon property they must be equal and uniform upon all property in the state."

But having confined the bearing of the article to the property tax, it still remains a most prolific source of confusion. An immediate conflict with common sense is occasioned by the fact that this article really debars all exemption. In this conflict it has been the article and not common sense which has given way. Legislative bodies were allowed perfect freedom in exempting property until a few years ago, when the Court of Appeals spoiled the interesting Hyattsville experiment with the single tax, because it did not believe in the single tax. "We are not to be understood," said Justice McSherry, "as denying to the legislature the power, when state policy and considerations beneficial to the public justify it, to exempt within reasonable limits some species of property from taxation."[2] But the bench reserved to itself the right of deciding what exemption was reasonable and what policy was beneficial.

No clearer demonstration of the folly and futility of inserting glittering generalities into state constitutions can be found than in the effect of this clause upon taxation in

[1] State *vs.* P., W. & B. R. R. Co., 45 Md., 378; Germania *vs.* State, 7 Md., 1; Appeal Tax Court *vs.* Rice, 50 Md., 302.

[2] Wells *vs.* The Commissioners of Hyattsville, 77 Md., 125.

Maryland. The ultimate control of taxation has passed from the legislature. Even their right of controlling local affairs has been infringed. A few years ago a statute was passed directing the county commissioners of Prince George's County to pay back to the commissioners of the town of Laurel all the county taxes levied upon real estate in that town. This act was held to be contrary to Article XV of the Bill of Rights. After this it is impossible to predict what measure of interference the courts will allow themselves. It seems clearly within their province to annul any tax which to their minds is unjust or unreasonable.

One might view this emasculation of the legislature with equanimity if it were certain that the rulings of the courts would be consistent either with good logic or sound finance. But they are not. In their view it is beneficial to exempt grave-yards and churches, but it was not beneficial to exempt the personalty in Hyattsville in order to test the efficiency of a well-endorsed tax reform. In 1842 it was reasonable to impose a special tax upon watches,[1] but it is now unreasonable to lay a special tax upon all coal mined in the state for transportation. To tax corporate stock both to the corporation and the individual owner is declared double taxation, but mortgagor and mortgagee may be taxed upon the property and upon the debt on the property respectively, and no offense be committed. In the past, Maryland has twice employed the income tax. But now that the income tax has grown "socialistic," one cannot tell whether it would appear just and reasonable to our judicial arbiters or not.

At present tax reform in Maryland is at the mercy of the courts. I do not believe that the framers of the Constitution meant that the power of deciding upon the expediency of proposed taxes should be lodged with the judiciary, and it is a grave question whether it should be so placed. Judges are proverbially bad economists, and from an econ-

[1] *i. e.*, it was never declared unreasonable.

omic standpoint we can count upon little more than their conservatism. But conservatism is a virtue only where the thing conserved is worth conserving, and this worth does not attach to the antiquated and outgrown system of taxation inherent in the fifteenth article of the Bill of Rights. The effective control of taxation should be placed with the legislature, and care should then be taken to send men to the legislature who would not abuse their power.

To repeal the fifteenth article of the Declaration of Rights would require a constitutional amendment. Such an amendment was presented to the people in 1891 and was defeated by a majority of less than 600 votes. But this vote cannot be taken as a permanent indication of the wishes of the people; only thirty-six per cent. of those voting for the governor voted upon the amendment. The masses, with traditional indifference, did not take the trouble to vote. Large property-holders were foolish enough to look upon the article as the bulwark of public financial equity. As a consequence rational taxation was indefinitely postponed.

There is no reason to disguise the defects of the property tax. Academic writers have fully exposed its weakness and numerous contributions to the steadily growing collection of monstrosities attributable to it will be found in the following papers. The fact remains that in Maryland the property tax is entrenched in the Constitution and until that is amended we must look to reform and not to revolution. Moreover, the writers who have criticised the general property tax have utterly failed to propose a satisfactory substitute.

There are, however, a number of practical reforms which should be instituted at once. One of the most important of these is the revocation of special class privileges. Such provisions as the exemption from taxation of all persons whose property is assessed at less than $100, or the limitation of local taxation upon bonds and stock in foreign corporations to three-tenths of one per cent., are inconsistent from a legal standpoint, and as fiscal expedients, acknowl-

edged failures.[1] The constitution of the state declares that every person ought to contribute his proportion of the public taxes according to his actual worth in real or personal property. If it be inconsistent with this clause to exempt all personal property from taxation, it is also inconsistent to limit local taxation upon a certain class of personal property to thirty cents upon the hundred dollars. If the limitation be defended on the ground that these securities are taxed in other states, a claim that is valid in the case of stock in foreign corporations, they should be exempted *in toto*, not taxed in part.

Two arguments have been advanced in defense of this limitation. It is claimed, in the first place, that it stimulates the listing of such property or, in other words, that it makes dishonest men honest, and in the second place, that it attracts a desirable class of residents.

The first claim can be decided only by reference to the opinion of experienced and disinterested tax-officials. The officials with whom I have conversed upon this subject are almost unanimous in condemning the law. Many of them hold that it is an unjust discrimination. They state, almost without exception, that it has not increased the taxable basis in a degree sufficient to compensate for the reduction of rate. As the State Tax Commissioner writes, the increase in the assessed value of bonds and stock in foreign corporations since the passage of the limitation, is due to the new assessment act which went into effect at the same time, and not to the limitation. The man who will perjure himself to escape a rate of two dollars will also perjure himself to escape a rate of thirty cents.

The claim that the limitation of local taxation upon bonds and foreign stocks will attract capitalists is almost too trivial for notice. Differences in local rates may draw men of means from one part of the state to another, but the

[1] It is interesting to note in this connection that the members of the present Appeal Tax Court of Baltimore are opposed to the law exempting the plant of manufacturing companies as it now exists.

number of men who can be induced to change their residence from one state to another by the reduction of taxation upon a single species of property, is too small to be seriously considered. Moreover, a large part of the burden which is removed from bonds and stocks must be placed upon other classes of property. The general rate of taxation goes up as the number of special exemptions increases, and this fact deters immigration as much as the special limitation encourages it. It is the general rate of taxation which is considered by the prospective immigrant.

As a matter of fact it would be very nearly accurate to state that the whole policy of exempting special classes of property in order to attract capital and capitalists is a palpable mistake. The industry that has to be permanently subsidized by the state is a source of weakness, not an element of strength. When we encourage the establishment of manufacturing plants, we discourage the investment of capital in improvements upon real estate. And what is perhaps most important of all, we divert public opinion from the natural means of attracting capital. The true incentive to capital is a low rate of general taxation and that is to be secured by economy in the expenditure of the public money, not by the grant of special favors which may be retracted at the caprice of the legislature which bestowed them.

I have included in the class of those specially, and in consequence, unjustly favored, the persons who are exempted from taxation because they are assessed for less than $100. This has been done because the exemption from state taxation involves the exemption from local taxation, and in local taxation, to invert a well-known phrase, there should be no representation without taxation. In state taxation men may be called upon to contribute in proportion to their ability, and the man who really owns less than $100 worth of property, may justly be treated as unable to pay any direct taxes at all. This is particularly true when the burden of indirect taxation is taken into account. But muni-

cipal taxation rests upon a different basis. The municipality is more akin[1] to the corporation than to the state, and only those members of the corporation should participate in its government who contribute towards its maintenance. Responsibility educates, and the obligation on the part of the poorest citizen to make some sacrifice in return for the important service rendered by the modern city, would be the surest means of securing intelligent voting and purifying municipal politics.

The most "satisfactory" taxes we have are those of secondary importance. Many of the evils of the property tax arise from the fact that we are accustomed to raise such a large proportion of the public revenue by this agency. One remedy would seem to lie in the further diffusion of taxation. Whether or not the "diffusion" theory is correct, it is certain that several of the minor taxes could be increased with benefit, if this increase were subtracted from the property tax. The first of these is the inheritance tax; there is no reason why the present rate upon collateral bequests should not be increased, particularly where these bequests are large. On the other hand, part of the burden upon individual property might be shifted upon corporations with advantage.

Under the present constitution, the shifting of a larger part of the burden upon corporations can only mean an increase in the franchise taxes on gross receipts. We have already given reasons for believing that this should be done in the case of railroads. The increase of rate should, however, be made all along the line, particularly upon quasi-public industries and upon the trust companies of Baltimore. For its monopoly in the city of Baltimore the Consolidated Gas Company paid in 1887, $12,343.96. The franchise is probably worth ten times that amount. At the date of writing no business is in such a flourishing condition

[1] I say "more akin" advisedly. I should avoid the general statements contained in this paragraph were it not for the limitations of space.

as that of the trust and fidelity companies of Baltimore. Eight of these companies paid the franchise tax of two per cent. upon gross earnings in 1897. Four of these eight companies have each accumulated a surplus greater than their capital stock and the shares of the eight companies noted are worth, on the average, a premium of one hundred and sixty per cent., several of them selling at nearly four times par value.

The universal prosperity of this class of corporations proves that much of it is dependent upon the peculiar franchises granted them. The banking and other privileges conferred are valuable and should be charged for. From either the faculty or the *quid pro quo* standpoints these corporations should be put in a new and advanced class, and be subject to a tax say of three per cent. upon gross earnings instead of two per cent. This could be done without the slightest acquiescence in the doctrine that success should be taxed wherever and whenever it appears, simply because it is success.

Before attempting to relieve the property tax by increasing the rates of other taxes, the property tax should be rendered as inexpensive as possible. The assessment of 1896 cost $186,000 in Baltimore City alone, and neither the quality of assessors nor that of the assessment was extraordinary. The assessment of personalty in 1898 cost much less than $186,000, but in neither case did the results justify the expense. The recommendations of the Appeal Tax Court and the Board of Estimates of Baltimore City should be followed; the biennial assessment should be replaced by a permanent corps of trained assessors holding office during good behavior.

One of the most glaring abuses in the financial system of the state is the method of paying registers of wills for the part they take in collecting state taxes. Their services in this connection consist principally in the collection of the inheritance tax and the tax on commissions of executors and administrators, the most easily collected of all state

taxes. Until 1892 the remuneration of the registers was five per cent. of their collections. In that year the legislature was moved to raise this commission to twenty-five per cent. The magnitude of the resultant leakage, to use a mild term, may be gathered from the following statement of Comptroller Goldsborough, who calls attention to this abuse in his report for the fiscal year 1898. "Were this law not in effect we should have received during the present fiscal year, in round numbers, the sum of $233,000, as against $184,000."

The changes suggested in this section of the paper have at least the merit of practicability. Whether they are advisable is of course open to debate, but that they are possible is unquestionable. In conclusion it may be proper to mention one or two more thorough-going reforms whose introduction would be far more difficult.

The greatest evils of American commonwealth taxation are the escape of personal property and double taxation, and as long as property, and claims to property in one state, may be owned by citizens of another state, these abuses are likely to remain. None of the suggested reforms—certainly not the income tax—strike at the root of these evils.

I fail to see how they can be remedied except by the creation of an interstate department of taxation—an American *Zollverein*—taken in connection with a provision for debt exemption. If taxpayers were allowed to subtract from their assessment every debt for which they could cite a *bona fide* creditor, to whom the credit could be assessed, the private securities now hidden would be brought to light by the operation of self-interest acting on debtors. For example, an individual, *a*, holds land in the state, *A*, which is mortgaged to *b*, resident in the state, *B*. The whole value of the land would be assessed to *a* in *A*, and the assessment would not be reduced until *a* had produced evidence of his debt to *b*. This credit would then be assessed, by the interstate bureau of taxation, at its actual value, based upon the amount of interest actually paid, and

it would then be determined whether *b* acknowledged the credit and whether he could be taxed. If the tax could be collected from *b*, the value of the debt would then be subtracted from the assessment of *a*, and transferred to the assessment of *b*. If the land in question be taken to represent any kind of tangible property, and the mortgage any kind of interest-bearing claim to property, we have a typical instance of the most prolific source of perjury, double taxation, and fiscal injustice in present commonwealth taxation.

The question immediately arises: which state, *A* or *B*, is to receive the taxes on the credit owned by *b*? The domicile of *b* is in *B*, but the property is in *A*. In which state should he pay?

Before answering this question it may be well to point out that, irrespective of *A's* ability to collect the tax from *b*, it would be desirable to exempt *a*. The mortgage upon *a* is a distinct drain upon his ability to pay—negative wealth—and whether *A* can collect the tax upon the property from *b* or not, justice and political economy alike demand that *a* should be exempt. The reason that American states refuse to exempt debt is not because they frequently have no jurisdiction over the owner of the debt; the reason is that, without the interstate intelligence bureau of which I have spoken, fictitious debts can be manufactured at pleasure and the privilege abused. Dismissing all reference to the division of the taxes upon intangible personalty and recurring to our illustration, it is seen that this danger of abuse would be avoided if the state, *A*, simply informed the state, *B*, of *b's* ownership of the credit and exempted *a* only after word had been received from the tax officials of *B* that *b* acknowledged the credit and was paying taxes upon it. Debts owned in foreign countries would of course remain a minor source of evil until an international agreement had been reached.

We may now return to the problem of the distribution of the taxes upon the mortgage. In the first place it may be stated, as a consequence of the preceding paragraph, that

if no state were able to collect taxes upon credits owned in other states, there would be no necessity for a stronger interstate association than the mere intelligence bureau charged with the verification of debts upon which exemption was claimed. Even under existing conditions such a bureau would be of immense advantage.

As a matter of fact, however, American states can and do tax a most important class of credits owned by citizens of other states (corporate stocks), and there nowhere exists, even within the boundaries of a single state, a clear idea of the proper distribution of taxation. No one has as yet explained whether taxes should follow the property or the owner of the property. To express the difficulty in concrete terms: should shares of stock be assessed in the state in which the company is incorporated, or in the state in which owned, or partly in each state, and if partly in one state and partly in the other, how are the proportions to be determined? To do away with all double taxation an interstate agreement upon these points would have to be consummated. It is for this reason that I have spoken of this reform as being far more difficult than those suggested in the earlier sections of the paper.

[Bibliographical Note.—1. Archives of Maryland, Baltimore, 1883. 2. Assessment Laws of 1896, Baltimore, 1896. 3. Public General Laws of Maryland. 4. Reports of the Comptroller of the State of Maryland. 5. Maryland: Its Resources, Industries and Institutions; by members of Johns Hopkins University and others, Baltimore, 1893. 6. Report of Maryland Tax Commission, Baltimore, 1888. 7. J. H. Hollander, Financial History of Baltimore, Baltimore, 1899. 8. Report of the Tax Commission of Baltimore, Baltimore, 1886. 9. Henry N. Bankard, Taxation under the New and Old Assessment Laws, Baltimore, 1897. 10. Frederick J. Brown, Short Talks on Taxes, with reference to the Hayes Bill (1892), Baltimore, 1894. 11. Richard M. McSherry, Talks on Taxation in Maryland, Baltimore, 1893.]

II.

TAXATION IN NORTH CAROLINA[1]

By GEORGE ERNEST BARNETT

Economic Characteristics

Few states in the Union have struggled with greater difficulties in the construction of a satisfactory financial system than North Carolina. Omitting from comparison the wealthier and more densely settled states of the East and middle West, let us compare North Carolina with its neighbor on the north. The areas of North Carolina and Virginia are nearly equal; the populations of the states almost exactly the same in number; practically the same needs of government have to be satisfied in the two states; and yet the total assessed value of property in Virginia is nearly twice that in North Carolina.[2]

The valuation of assessed property *per capita* for the United States in 1890 was $407.88, while the valuation for North Carolina was only $145.43. Only one state in the Union had a lower *per capita* valuation. When it is borne in mind that the cost of state government increases with growth of population while the sources of revenue depend

[1] In the preparation of this paper I have received assistance from Hon. Hal. W. Ayer, State Auditor of North Carolina; from Hon. W. H. Worth, Treasurer of North Carolina; and from Herbert Clement, Esq., of Mocksville, N. C. Mr. Ayer and Prof. J. S. Bassett of Trinity College, Durham, N. C., have done me the favor of reading the proof. It is just to these gentlemen to say that they are in no way responsible for any opinions advanced herein.

[2] According to the census of 1890, the total assessed value of property in Virginia was $415,249,107; and in North Carolina, $235,300,674.

most largely on the growth of wealth, the difficulty of the problem presented in North Carolina becomes easily apparent. Under such conditions, the general property tax alone cannot defray the expenses of state as well as of county and municipal governments, without becoming oppressive. Other sources of revenue must be found.

But when we turn to the corporation tax to find relief for the payer of taxes on real and personal property, we are confronted with the difficulty that the population of North Carolina is distinctively rural. The largest town in the state has barely 20,000 inhabitants. Only about four per cent. of the people live in towns of 8,000 or more inhabitants. Industrial enterprises do not multiply under such conditions. Consequently, although a considerable revenue is derived from corporations, such receipts by no means constitute a chief part of the state's income.

As a result of these conditions, the forms of taxation employed in North Carolina have been various. The poll tax of colonial and ante-bellum times is still retained; the general property tax has been raised in rate from time to time, and systems of license taxes and corporation franchise taxes have been introduced. Besides these taxes, an experiment has been made with an income tax, and for a brief period a tax was imposed on inheritances.

A study of commonwealth taxation in North Carolina includes a study of some taxes which are in most other states local taxes. Thus the taxes levied for school purposes are almost entirely state taxes. Some school districts and many towns levy special taxes for schools, but, in general, school taxes are state taxes. These taxes, however, are never paid into the state treasury. They are in collection and distribution local taxes, but the General Assembly fixes the rate, which is uniform throughout the entire state.

This is not the only way in which the General Assembly regulates local taxation. By constitutional limitations the state and county tax rate may not exceed 66⅔ cents on

the hundred dollars' worth of property.[1] As the present state rate, inclusive of the school tax, is forty-three cents on the hundred dollars, only twenty-three and two-thirds cents are left for county purposes. This would be in many cases too small to supply the needs of the county government. The General Assembly, however, can authorize any county Board of Commissioners to go beyond this rate. Such excess must, however, be by special act of the General Assembly. So numerous have been such acts that in 1897 the special taxes levied in the counties amounted to more than two-thirds of those levied without specific authorization.[2] Municipal taxation may not exceed one per cent. unless by act of the General Assembly.

General Finances

The annual receipts of the state treasury of North Carolina from sources other than taxation are about $400,000. The chief items composing this amount are: (1) interest on various productive stocks and bonds; (2) earnings of the penitentiary; (3) appropriations by the federal government; (4) various fees collected by state officials; (5) proceeds of the sale of various state publications.

The state owns 30,002 shares of stock in the North Carolina Railroad Company. The annual income from this stock is at present $195,013 and after 1900 it will be $210,014. The state also holds 12,666 shares in the Atlantic and North Carolina Railroad Company. In 1898 these shares paid into the treasury as dividends $12,666.[3] Besides shares in railroads, the state holds $136,750 of its

[1] This limitation is the joint product of two provisions in the constitution: (a) the combined county and state poll tax must not exceed $2.00; (b) the poll tax must be equal to the tax on $300 worth of property. See Constitution of North Carolina, art. V, sec. 1.

[2] Report of Auditor 1897. The amounts were respectively: regular county taxes, $630,478.14; special county taxes, $433,690.56.

[3] This amount is usually $25,332, but one-half of the payment was not made in 1898 before the publication of the Auditor's Report.

own four per cent. bonds, and the state board of education also holds a large amount of the state funded debt. Certain bonds of Alexander county are owned by the state, and by an agreement with that county are being paid off at the rate of $1,000 per year. From all these sources the state received in 1898 the sum of $216,854.

The earnings of the penitentiary are applied to the support of that institution and amounted in 1898 to $94,942.41. The federal government appropriated $39,000 in the same year to the state agricultural colleges and to the North Carolina Experiment Station. The fees collected by state officials, together with the proceeds from the sale of state publications, *e. g.* journals, laws, codes, colonial records, etc., with various miscellaneous items, were, in 1898, $17,225.08.

The non-tax receipts thus amounted in 1898 to $368,-021.49. No exceptional item is contained in this amount, and this sum may be taken as the normal amount of the non-tax receipts of the state.

During the year 1898 the receipts of the state government amounted to $1,334,082.24, so that the amount raised by taxation in that year was $966,060.75.[1] The various taxes levied to raise this sum are described and discussed in the remainder of this paper.

Section 4864 of the Code of North Carolina requires the treasurer to "furnish the General Assembly, at the commencement of each session, with estimates of the expenses of the State government and the rates of taxation necessary to pay the same for the two years next succeeding the close of the last fiscal year, with a scheme in the form of a complete Revenue Bill, to sustain such estimates." The most variable part of the Revenue Act is the rate of the general property tax and of the poll tax. If the General Assembly

[1] Of this sum, $61,377.94 was paid into the treasury for examinations of fertilizers by the Agricultural Department. This is a fee rather than a tax, and will not be discussed below. Deducting this amount, the sum raised by taxation proper was, in 1898, $904,682.81.

finds that existing taxes do not bring in sufficient revenue, the easiest way to make sure of an increase is to raise these rates.

The state constitution requires that, "Every act of the General Assembly levying a tax shall state the special object to which it is to be applied and it shall be applied to no other purpose." In accordance with this provision, the general property tax is divided into three levies for distinct purposes, viz. state purposes, school tax, and pension tax. The school tax is paid to the county treasurers, and the pension tax is paid to the state treasurer and is kept in a distinct fund, but in general the funds of the state are not segregated for specific purposes. The income from the state's holding of North Carolina Railroad stock is specifically devoted to the payment of certain interest charges, but no separate fund is made of these receipts. So, also, the income of the state from certain license taxes is devoted by law to the payment of the interest on another part of the state debt, but such income is simply added to the income from other sources, and no separate account kept.[1] The only parts of the state's revenues which are kept entirely distinct are the pension fund and the education fund, the latter of which is not derived from taxation.

A summary of the state's receipts and expenditures in 1898 is here appended:

RECEIPTS.

Public Taxes per Sheriffs and Tax Collectors	$605,350.99
Tax on Railroad Property	70,598.98
Tax on Steamboat and Canal Property	631.65
Tax on Telegraph and Telephone Companies	1,744.17
Tax on Bank and Building and Loan Stock	12,290.61
Special Tax to pay Pensions	112,848.49
License Taxes paid direct to State Treasurer	43,358.27
Tax on Gross Earnings	57,628.67

[1] "All state taxes levied and collected from professions, trades, incomes, merchants, dealers in segars, and three-fourths of all the taxes collected from wholesale and retail dealers in spirituous, vinous and malt liquors shall be held and applied to the payment of the interest on said bonds." Code of North Carolina, sec. 3576.

Railroad Dividends	207,679.00
Income from other Investments	9,175.50
North Carolina Penitentiary Earnings	94,942.41
Fees (including Tonnage Tax on Fertilizers)	64,399.83
United States Government Appropriation	39,000.00
Sale of State Publications	2,828.17
Miscellaneous	11,606.00
	$1,334,082.24

EXPENDITURES.

Interest on the State Debt[1]	$295,606.00
Pensions	100,840.50
Hospitals for the Insane	185,450.00
Institutions for the Deaf, Dumb and Blind	152,500.00
Educational Institutions	120,750.00
Executive Departments, including Boards and Bureaus	118,059.59
Judiciary	63,061.88
Penal Institutions	95,992.41
Orphan Asylums	15,000.00
North Carolina Experiment Stations	15,000.00
State Guard	31,215.00
Appropriations to Public Schools	10,586.70
Miscellaneous	79,910.03
	$1,283,971.11

Development of Taxation[2]

1776-1850. During the colonial period, direct taxation was seldom used in North Carolina. Import duties, especially on wine and spirits, yielded revenues sufficient for the needs of the government except in extraordinary emergencies.[3] During the Revolutionary War the principal expenses of the state were met by issues of paper money. To the acts authorizing such issues, a clause was usually added providing for the redemption of the notes by the levy of certain taxes. These taxes nearly always took the form

[1] The state debt of North Carolina amounts in all to $6,331,770. Of this sum, $3,370,850 is in four per cent. consolidated bonds; $2,720,000 is in six per cent. construction bonds, and the remainder is the old debt of the state, exchangeable into four per cent. consols before Jan. 1, 1899.

[2] So far as I have been able to ascertain, the history of taxation in North Carolina has never been written.

[3] Iredell's Revisal (1791), p. 117, f. 15; p. 169, f. 3; p. 223, f. 4.

of an excise duty or a small poll tax.[1] Taxation within the parishes was upon property and by poll, as is shown by the provisions of the Poor Law of 1777,[2] which enacted that the overseers of the poor "may lay a tax, not exceeding one shilling for every hundred pounds of taxable property." This property tax was joined with a poll tax levied upon every one not owning property worth one hundred pounds.

With the surrender of the right to lay import duties at the adoption of the federal constitution, freer resort was necessarily had to the taxation of land and polls. Land outside of towns was taxed by area, irrespective of quality or value; but town lots were taxed according to value.[3] Unmarried freemen, of legal age, were required to pay a poll tax equal to the tax on one hundred pounds.[4] In 1783 the General Assembly taxed cattle and slaves at a certain fixed valuation, cattle being rated at twenty shillings per head and slaves at from twenty to forty pounds according to age. Carriages, phaetons, stage wagons and other "carriages of pleasure" were taxed five shillings specie per wheel. But in 1784 all freemen were taxed and in place of the taxation of slaves according to a fixed value, the same poll tax was placed on them as on freemen, except that slaves above the age of fifty were not taxed. The taxes on cattle and carriages were abolished.

Such a system of taxation was adapted only to a community where wealth was evenly distributed among the taxpaying class and to a condition where the public charges were so light that inequalities in the burden borne by different persons were inappreciable. The state confined itself to the function of governing. It provided neither hospitals nor common schools. Land was the chief form of wealth, and in value slaves were far in excess of

[1] *Ibid.*, p. 16, f. 14; p. 194, f. 17; p. 223, f. 5.

[2] Laws of the General Assembly, ch. 117 (Martin's Revisal).

[3] The same tax was paid on every hundred pounds' value of town lots as on 300 acres of land. Laws of the General Assembly, 1784, ch. 1, sec. 1 (Iredell).

[4] Laws of General Assembly, 1783 (Iredell).

any other form of personal property. To meet the small fiscal needs of the government, the General Assembly taxed the commoner forms of wealth to the exclusion of other kinds. These represented tax-paying faculty in a crude way and had the eminent advantage of being easy to reach.[1]

The system of assessing all land at a uniform rate per acre could not last long. As the poorer lands were taken up, the inequality became more and more glaring. Taxation according to value came into vogue and a new system of assessment was devised. Landowners were required in 1819 to list their lands at a sworn valuation, which was required to be at least as high as that put thereon by the Congressional Assessment of 1815.[2]

For thirty years after 1819, there was hardly a change in the tax laws of North Carolina. With some increase in the number of occupations subject to a license tax,[3] and with unimportant changes in the amount of the poll tax, the system remained in vogue until 1850.[4] The rate of taxation during this time remained fixed at six cents on the hundred dollars for property and twenty cents on each taxable poll.

Several times between 1825 and 1850, the prevailing

---

[1] The tax returns were made in the following form: (a) name of tax payer; (b) quantity in each tract of land; (c) town lots; (d) number of free polls; (e) number of black polls; (f) amount. See Laws of General Assembly, 1784, ch. 1, sec. 7.

While land and slaves were the chief subjects of taxation in this period, license taxes were not unknown. Each revenue act changed these taxes, but in general they were imposed on inns, pedlers, playing cards and stud-horses. The General Assembly in at least one instance in these early days used its taxing power to destroy: "A. B. C. & E. O." tables were taxed $250 per annum. (Laws of North Carolina, 1785, ch. 8.)

[2] Laws of General Assembly, 1819, ch. 1.

[3] Some of the license taxes introduced during this period were those imposed upon merchants, itinerant players, negro-traders and auctioneers.

[4] During this period the inheritance tax was introduced, but its returns were very small. For description of this law, see below under "Inheritance Tax."

system of taxation seemed on the point of failing to furnish adequate revenue, but some lucky chance always gave the old system a new lease of life. The first occasion of trouble was the necessity of redeeming the notes issued in 1814, 1823 and 1827, the proceeds of which had been appropriated to the Literary Fund. The finances of the state were in such poor condition that it became necessary to borrow largely from the Literary Fund, which had been created for educational purposes.[1]

1850-1898. Until about 1850, not only in the state of North Carolina but throughout the South, tax receipts were derived in the main from three sources: (*a*) land; (*b*) polls; (*c*) licenses. The growth of towns, with their trade and small manufactures, and the increase of wealth in the shape of personal property had early suggested to many minds, the advisability of a redistribution of the burden of taxation. The treasurer of North Carolina in his report for 1834 strongly urged the taxation of personal property. The necessity for any change was, however, temporarily averted by the dissolution of several banks in which the state had large interests. The money paid over

[1] The expenses for 1827-1828 amounted to $80,890.41. The chief items were:

General Assembly	$36,658.23
Judiciary	20,799.47

The receipts from taxation in the same year were:

Land Tax	$24,867.49
Town Property Tax	1,402.86
Poll Tax	26,932.21
Stud-Horse Tax	1,484.82
Gate Tax	202.40
Store Tax	6,271.68
Artificial Curiosity Tax	507.60
Pedler Tax	935.30
Billiard Table	470.00
Fines	1,200.00
	$61,883.16

See Auditor's Report for 1828.

by the general government in 1838 was also devoted in part to supplying deficiencies of state revenue.

In 1850 the fiscal demands of the state had, however, grown too pressing to permit of longer delay. The General Assembly in this year began the taxation of personalty by imposing (1) a tax of three cents on each dollar of net interest received from loans, if such interest amounted to more than six dollars; (2) a tax of three cents on each dollar of profits, and (3) a tax of twenty-five cents on each hundred dollars employed in the slave trade. Plate, jewelry, and watches were also taxed.[1]

Since the Civil War the tax rate has been raised and two important changes have been made in the existing system: (1) the taxation of personalty of all kinds exactly as realty; (2) the introduction of corporation taxes. These changes are described below in connection with the particular taxes affected.

General Property Tax

Contrary to the tendency in many states, taxation of property has been of increasing importance in the financial system of North Carolina, from its inception to the present time. Up to 1850, the poll tax rivaled it in productiveness; but when, in that year, what had been a real property tax became practically a general property tax, its return to the state treasury soon outstripped the yield of the poll tax. Since the war, the poll tax has not been paid to the state treasury, and the general property tax has been the mainstay of North Carolina's fiscal system. The increasing importance of this tax is shown by the rise in its rate from time to time. From 1819 to 1855 the rate on property remained stationary at six cents on the hundred dollars. In 1855, this was raised to twelve cents and in 1856 to fifteen cents. An increase in the kinds of taxable property has accompanied the increase of rate.

[1] Public Laws of North Carolina, 1850, ch. 121.

The present rate is forty-three cents,[1] apportioned to various funds as follows:

General state purposes	21⅔ cents.
Pensions	3⅓ "
Public schools[2]	18 "

The present constitution of North Carolina provides that " Laws shall be passed taxing by a uniform rule all moneys, credits, investments in bonds, joint-stock companies or otherwise, and also all real and personal property according to its true value in money." [3] Prior to the adoption of the present constitution in 1868, there had been no constitutional principles governing the property tax. The amendments of 1835 had enunciated certain rules with regard to the capitation tax but had left the General Assembly free to levy other taxes as it might see fit. The clause of the present constitution providing for the exemption of certain forms of property is as follows:

" Property belonging to the State, or municipal corporations shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, charitable or religious purposes; also, wearing apparel, arms for muster, household and kitchen furniture, the mechanical and agricultural implements of mechanics and farmers; libraries and scientific instruments, or any other personal property, to a value not exceeding three hundred dollars." [4]

---

[1] The rate was fixed at forty-six cents by the General Assembly of 1897, but as the rate was not in such proportion to the poll tax as the Constitution requires, the Supreme Court of North Carolina held that the clauses of the revenue act fixing such rate and the rate of poll tax were void and the corresponding clauses of the Revenue Act of 1895 still in force; *vide* Russel, Gov. *vs.* Ayer, Auditor (North Carolina Reports, Feb. term, 1897, No. 151, Wake Co.).

[2] As has been said above, the tax for public schools while levied by the General Assembly is a county tax in collection and distribution.

[3] Constitution of North Carolina, Art. 5, Sec. 3.

[4] Constitution of North Carolina, Art. 1, Sec. 5.

Over two-thirds of the total amount raised by taxation for state purposes in North Carolina is from the general property tax. More than one half of the school revenue and the larger part of county and municipal revenue is from the same source.

Assessment and Collection. The system of assessment used in North Carolina is that popularly known as the "listing system." Every fourth year, the board of commissioners of each county appoints "three discreet freeholders" in each township who "ascertain the true value in money of every tract or parcel of land or other real estate with the improvements thereon and personal property." This board of three assessors is empowered to administer oaths. The assessment thus made continues in force for four years unless structures of the value of $100 are erected or destroyed on the lands thus assessed. In such case, the assessment is to be changed. The assessors must advertise at five places in the township and must attend at two or more places for the purpose of receiving lists and assessing property. The property owner must appear before them and list his property, which they shall value. The assessment made by this board must be returned to the county commissioners, who with the chairmen of the township boards form a "board of equalization," with power to raise or lower any valuation put on any piece of real or personal property by the township boards.

In years other than assessment years, the county commissioners appoint one list-taker for each township. All lands in the township are listed by him at the valuation previously assessed on the same by the board of assessors. Personalty, however, is listed anew each year, and its valuation may be changed.

Every property owner must appear before the list-takers and assessors and file a list of his property.[1] This list includes the following items:

[1] The only persons who can fill up the list by agents are females, non-residents of the township, and persons physically unable to attend and file their lists.

1. Quantity of land owned in township.
2. Horses, mules, jacks, jennies, goats, cattle, hogs and sheep, separately with the true value thereof.
3. Farming utensils, tools of mechanics, furniture, firearms, provisions, libraries and scientific instruments, separately, with the value thereof.
4. Money on hand, including all funds invested within thirty days before in United States bonds or other non-taxable property.
5. The amount of credits, including interest, whether in or out of the state. Bank deposits and property in the hands of commission merchants are deemed credits. If any credit be not regarded as entirely solvent, it is given in at the market or current rate. The party may deduct from the amount of credits owing to him the amount of collectable debts owned by him as principal debtor.
6. Building and loan association stock.
7. Money investments, stocks and bonds of whatever nature except bonds of the United States and of North Carolina, and such other bonds as may have been expressly exempted from taxation by law in this state.
8. All other personal property whatever.
9. The gross income of the party the twelve months preceding, not derived from property already taxed, and also income beyond one thousand dollars, derived from salaries or fees or both.

The law further provides that the taxpayer must swear that the list handed in by him contains all the property which he is required to list and that the value fixed thereon is a true valuation. It is a misdemeanor punishable with fine or imprisonment or both for a taxable person to refuse to list, or to refuse to answer any questions respecting his property. The board of county commissioners of each county reviews the tax lists returned and has power to raise or lower valuations. If any property escapes taxation and such escape is afterwards discovered, back taxes for five years may be collected, and in the case of lands twenty-five per cent. extra tax may be added. Any person failing to list poll or property is charged twice the amount of what would otherwise be exacted.

The sheriff is the officer of collection; he is required to enforce collection by the sale of personal property if sufficient, and if not, by selling the real estate of the delinquent. A new instrument for the collection of taxes was introduced

by the General Assembly of 1897, viz., imprisonment. The law proving impracticable was repealed in 1899.

Defects of the Property Tax. The system of assessment outlined above is free from some of the conspicuous defects of the general property tax in other states. The assessors are appointed by the county commissioners and are not elected by the people. Hence, they do not have that inducement to curry popular favor by undervaluation, which has become in many places one of the gravest evils of the general property tax. Then, again, the assessment for county purposes being based on the same list as the state assessment, there is lacking the temptation to undervalue property in order to lighten the state tax on the county in proportion to that in the rest of the state. "Boards of Equalization" in the Western sense, are not needed. The valuation of all railroad property in the state has been placed, as described below, in the hands of a single commission, and irregular assessment has thus been prevented.

Many defects do, however, appear in the listing of property. In his report for 1897, the auditor states that only one county in the state had returned a uniform number of acres of land for taxation during the previous five years.[1] Slight variations in the number of acres of land returned are, however, of little importance as compared with the great question of the proper return of personalty. There can be no doubt that in North Carolina as in most other states in the Union an enormous amount of personal property escapes taxation. This happens in two ways: (1) visible personal property, such as furniture, cows, etc., is grossly undervalued; (2) much invisible personal property is not listed. The first happens to some extent with respect to all kinds of property but more largely with personalty, since the value of a particular horse is not usually known to the assessor and the animal is less valuable to many

[1] The auditor believes more regularity in the returns can be secured by employing better men as list-takers and assessors, receiving a higher salary.

owners just at listing time. The second manner of escape is peculiar to personal property. Stocks, bonds, and credits are difficult to reach and the memory of the owner is apt to prove treacherous. The following table will show how the amount of stock varied in certain counties:

County.	1893, Stock, etc.	1894, Stock, etc.	1895, Stock, etc.	1896, Stock, etc.	1897, Stock, etc.
Cabarrus	$99,000	$103,000	$81,000	$31,000	$20,811
Guilford	93,000	42,000	9,000	78,000	13,725
Forsyth	50,000	140,000	32,000	18,000	267,579
Rowan	444,000	42,000	16,000	299,000	12,685
Durham	265,000	104,000	1,028,000	1,344,000	1,410,000
New Hanover ...	195,425	37,937	114,508	67,650	10,200
Catawba	30,779	40,804	21,817	2,296	4,709

One part of the North Carolina listing act appears to have been especially intended to aid the "tax-dodger" in accomplishing his designs. Paragraph 7, section 16, of the assessment act declares: "The party may deduct from the amount of his credits owing to him the amount of collectable debts owing by him as principal creditor." This provision may be attacked from two sides. In the first place, why should a taxpayer be allowed to deduct his debts from his solvent credits more than from any other item? He can only reduce his taxes on account of his debts, if his property happens, in part at least, to take the form of solvent credits. This is an injustice to other taxpayers. If allowance is to be made for debt, it should be made in all cases. In the second place, such an exemption furnishes a cover for evasion of taxation. If a taxpayer owns a mortgage, he may set off against this credit his real or fictitious debts. If this privilege were not allowed him, he would be obliged to list his mortgage, since it is a matter of public record and he would not dare to neglect to give it in to the assessor or list-taker. But as it is, who can say what a man owes? Even though the assessor knows of many solvent credits belonging to such taxpayer, he can have no means of ascertaining the offsetting indebtedness, since the taxpayer is not required to enumerate or state his

debts. He simply makes a sworn statement that his solvent credits exceed his debts by a certain amount.

Undoubtedly, the property tax in North Carolina is more nearly a measure of ability than in many American commonwealths. In a state so largely rural, where much is known of neighbors' affairs, tax-dodging must of necessity be less than in states with more and larger cities, where the public inspection of tax-books is neither common nor practicable.

License Taxes

The license tax on inns was one of the sources of colonial revenue in North Carolina. During the greater part of the slavery period, licenses furnished the only means by which the business element in the community was made to share the burdens of government. Since the Civil War, the number of license taxes has been largely increased and almost every form of business now bears its tax. The taxation of corporations in North Carolina has proceeded farthest along this line.[1]

Most license taxes are imposed for the sole benefit of the state. Some of them, however, are paid partly to the county. The total amount received by the state for licenses in 1898 was $206,321.60. Of this amount $100,986.94 was paid directly into the state treasury by licensees while the remaining $105,334.66 was collected by sheriffs in the various counties. The several license taxes[2] and the revenue derived from each are as follows:

(1).* Merchants' tax;[3] an annual tax on all persons con-

[1] While such taxes are really license taxes, since they are levied on a particular form of business, whether carried on by a corporation or by an individual, yet for convenience I have classed all license taxes on business, usually carried on by a corporation, as corporation taxes.

[2] Taxes marked by an asterisk were imposed for the first time by the General Assembly of 1899. No returns of these taxes will be procurable until December, 1899.

[3] This tax is the successor of a tax of two per cent. on the purchases of merchants, which yielded, in 1898, the sum of $27,686.11.

ducting the business of buying and selling merchandise. The amount of the tax is dependent on the capital invested, ranging from one dollar on a capital of $500 or less to $250 on a capital of $150,000.

(2). Liquor dealers' purchase tax; a tax of two per cent. on the purchases of such dealers. Amount of revenue in 1898, $7,712.95.

(3). Druggists dealing in liquors; annual tax of $50 or in some cases $25. Revenue in 1898, $659.40.

(4). Liquor dealers; a semi-annual tax ranging from $10 to $100 according to kind and quantity of liquor sold. Only the amount collected from wholesale dealers is paid into the state treasury. Revenue from the other classes goes to the county school fund. Amount of revenue in 1898, $1,200.

(5). Commission merchants; one per cent. on all commissions received by such merchants. Revenue in 1898, $631.70.

(6). Dealers in cigars, cheroots, manufactured smoking and chewing tobacco, and cigarettes; these pay a tax regulated in amount by their sales. Revenue in 1898, $12,717.70.

(7). Mercantile agencies; an annual tax of five dollars for every state and territory embraced in their reports. Revenue in 1898, $505.00.

(8). Sewing-machine manufacturers, selling their goods in the state; an annual tax of $350 per annum. Revenue in 1898, $2,564.50.

(9). Livery stables; a semi-annual tax of 50 cents for each horse or mule kept. Revenue in 1898, $1,049.84.

(10). Traders in horses or mules; an annual tax of $25. Revenue in 1898, $2,915.90.

(11). Dealers in pianos and organs; an annual tax of $10 on each brand sold. Amount of revenue in 1898, $409.14.

(12). Pedlers; an annual tax of $5 to $50 for each county in which they do business. Revenue in 1898, $1,424.75.

(13). Pawnbrokers; an annual tax of $50. Revenue in 1898, $50.

(14). Lightning-rod dealers; an annual tax of $20 for each county in which they sell. Amount of revenue in 1898, $240.

(15). Itinerant clock and stove pedlers; an annual tax of $100 for each county in which they sell. Amount of revenue in 1898, none.

(16).* Feather-renovaters; an annual tax of $5 for each county in which they do business.

(17).* Cotton-compresses; an annual tax of from $10 to $100 according to number of bales of cotton pressed.

(18).* Cotton-factors; $2.50 to $10.00 per annum according to the population of the town in which the business is carried on.

(19). Auctioneers; $2.50 to $15.00 per annum according to population of town. Amount of revenue in 1898, $51.34.

(20).* Bicycle dealers; an annual tax of $5 or $10, according to population of town.

(21).* Real estate dealers and rent collectors; an annual tax of $2.50 to $15.00 according to population of town.

(22).* Buyers and sellers of fresh meats; an annual tax of $3.00 to $7.50 according to population of town.

(23).* Wood and coal dealers; an annual tax of $5 to $20 according to population of town.

(24).* Collectors of accounts; an annual tax of $10.

(25).* Photographers; an annual tax of $5.

(26).* Ice manufacturers; an annual tax of $10.

(27).* Laundrymen; an annual tax of $10.

(28).* Lumber dealers; an annual tax of $10.

(29).* Undertakers; an annual tax of $10.

(30). Hotels; an annual tax of twenty-five cents per room if the charge for transient custom is less than two dollars per day. If the charge is two dollars per day or more, the tax is fifty cents per room. Revenue in 1898, $1,014.96.

(31). Lawyers, physicians and dentists; an annual tax of $5. Revenue in 1898, $12,227.81.

(32). Theatres; an annual tax of $15 to $200 according to the population of the town in which it is situated. Revenue in 1898, $787.50.

(33). Theatrical companies performing in unlicensed halls; a tax of $10 for each exhibition. Revenue in 1898, $43.00.

(34). Concerts and musical entertainments in unlicensed halls; a tax of $3 for each performance. Revenue in 1898, $207.75.

(35). Lectures for reward in unlicensed halls; a tax of $3 for each lecture. Revenue in 1898, $6.

(36). Museums, waxworks or curiosities of any kind; a tax of $3 for each exhibition. Revenue in 1898, $282.50.

(37). Circus or menagerie; a tax of $200 for each day or part of day. Amount of revenue in 1898, $2,539.00.

(38). All companies exhibiting for reward other than those mentioned in the preceding sections; a tax of $5 for each performance. Revenue in 1898, $454.50.

(39). Gift enterprises; a tax of $20. Revenue in 1898, $916.92.

(40). Lotteries; a tax of $1000. No revenue in 1898.

(41). Slot machines where return is uncertain; a tax of $100. No revenue in 1898.

(42). Billiard and pool tables, bowling alleys, etc.; a tax of $20 unless kept in connection with a place where liquor is sold, in which case the tax is $50. Revenue in 1898, $1,529.37.

(43). Skating rinks, merry-go-rounds, switch-back railways, etc., or stand or place for any other game or play with or without a name; a tax of $20. No revenue in 1898.

(44). Dealers in theatre tickets; a tax of $5. No revenue in 1898.

(45). Public ferries, bridges and toll gates; a tax of one per cent. of gross receipts. Revenue in 1898, $275.52.

(46). Gypsies or any other persons offering to tell fortunes for reward; a tax of $150 for each county in which they offer to practice their craft. No revenue in 1898.

Besides the license taxes enumerated above, there are some others which will be treated under the head of corporation taxes, since they are levied mainly on corporations. The taxes the treatment of which is thus postponed are those on (1) private business corporations, (2) insurance companies, (3) banks, (4) telegraph and telephone companies.

It is obvious that the license tax in North Carolina is not solely a fiscal measure. To make, for example, an itinerant clock-pedler pay $100 for each county in which he trades is simply a declaration that there shall be no clock-pedlers. Many of the objects of license taxation are luxuries; *e. g.*, tobacco and liquor sales and public amusements. These taxes are frequently said to operate to some extent to keep shows and theatrical companies out of the state and so to keep the people from "wasting their money." In other words, they are in some degree sumptuary legislation. The most productive license taxes are those upon ordinary businesses. Such a tax as that on sewing-machine manufacturers seems based on a wrong principle, since it tends seriously to limit competition. Not only must the purchaser of a machine pay part of the license tax of $350 but the fact that such a license is imposed, tends to establish an even higher figure; for the sewing-machine manufacturer before he pays his tax must have the hope of a larger gain than he would otherwise require.

The license taxes are collected, for the most part by the sheriff. Any person who practices any trade or profession or uses any franchise taxed by the laws of the state without paying the tax is subject to a fine or to imprisonment and to an additional penalty of fifty dollars. The license taxes on shows, curiosities and lectures are poorly collected. The auditor in his report for 1896 jocosely but pertinently remarks: "I am satisfied that these taxes are not looked after as they should be. Sheriffs are humane people generally and of most kindly disposition. I respectfully suggest that some method be devised by which county

authorities can be impressed with the importance of reading carefully the revenue act, then inwardly digesting it. The State Treasury will I am sure be much the gainer thereby."

Corporation Taxes

Under the present constitution of North Carolina, the property of corporations and individuals must be taxed alike. Corporate property is assessed for state, county, and municipal purposes. But, although the rate is the same for all property, the methods of assessing corporations differ from those used in the case of individuals. The mode of collecting many corporate taxes differs also from the ordinary methods used. And, finally, certain taxes have been levied on corporations, or rather on businesses usually carried on by corporations.[1] These taxes are called license taxes and as such are within the constitutional provisions.

Assessment of Corporations. The property of railroad, telegraph, telephone, sleeping car, refrigerator car, freight car, canal and steamboat companies is assessed by a board of state railroad commissioners. In the case of railroad, canal and steamboat companies, the method of procedure is as follows: All real and personal property, belonging to the corporation, and situated outside of the right of way, is listed in the county where located. The valuation of all other property belonging to any such corporation is made by the commissioners. The companies are required to file with the commissioners, answers to a series of questions. The commission may also "summon and examine witnesses and require books and papers to be submitted to them."[2]

On the basis of such reports and testimony, the commissioners determine the valuation of the property, "ascer-

[1] There is no double taxation of stock and property in North Carolina. Sometimes, as in the case of banks, the stockholder is made to pay local taxes, but in such cases the company is untaxed.

[2] Machinery Act, 1899, Secs. 44 and 49.

taining such value from the earnings as compared with the operating expenses and taking into consideration the value of the franchise as well as other conditions proper to be considered in arriving at the true value of the property as in case of private property."[1] The aggregate value of each company's property is apportioned to each county in the same proportion that the length of such road or line in each county bears to its entire length.[2]

The method of assessing telegraph and telephone companies varies somewhat from that described above. These companies are required to file annually with the auditor of the state a sworn statement,[3] showing:

(1). The total capital stock.
(2). The number of shares.
(3). The principal place of business.
(4). The market value of its shares.
(5). The real and personal property subject to local taxation.
(6). The real estate of the company, situate outside the state.
(7). All mortgages on its property.
(8). The length of the lines both in and out of the state and in each of the counties and townships of the state.

If the auditor deems the statements filed insufficient, he may call for further information. The reports, collected by the auditor, are submitted to the board of railroad commissioners, which ascertains first the value of the entire property of the company. The valuation is made on the basis of the market value of the shares. If the property is encumbered by a mortgage, the amount of the mortgage indebtedness is to be added to the value of the shares. Having ascertained the value of the entire property, the value of real estate owned by the company and situated outside of the state is deducted from the total valuation. The board next assesses the property within the state by considering what proportion the length of the lines operated by the company within the state bears to the total length

[1] Machinery Act, 1899, Sec. 45.
[2] *Ibid.*
[3] Revenue Act, 1899, Secs. 37, 39, 46 and 47.

of such lines.[1] In the case of express, refrigerator car and sleeping car companies, the method pursued is the same as that followed in taxing telegraph and telephone companies, except that in place of the "length of lines of such companies," the question considered is the "length of lines over which such company operates." The value of each company's property is apportioned to each county in the proportion that the length of such road or line in each county bears to the entire length.

The taxable valuation of all other corporations except insurance companies is based upon answers to the following questions:

(a). Name of corporation?
(b). Amount of capital stock authorized and the number of shares?
(c). The market value, or if no market value, the actual value of the shares?
(d). The assessed valuation of all real and personal property?
(e). Amount of capital stock paid up?

The assessed valuation of the real and personal property of the corporation is deducted from the aggregate value of its shares and the remainder is listed as the value of its capital stock. It is very plain that by this system a considerable portion of corporate property may escape taxation. No account is taken of bonded indebtedness which may represent a large part of the tax-paying ability of the corporation. Let us suppose, for example, a corporation with a paid-up capital of $50,000 and a bonded debt of $50,000. Now, clearly this represents a business which ought to pay taxes on $100,000. If this corporation requires large buildings and other visible property, its chance of dodging taxation is small. But, if a large part of its capital is in forms which can be converted into a "credit" by depositing it in bank, the bonded indebtedness may be offset against this credit. In this way many corporations may escape taxation on large portions of their property.

[1] Revenue Act, 1899, Sec. 42.

License Taxes on Corporations. A license tax is imposed on certain kinds of business conducted almost exclusively by corporations. The charge is either a fixed sum or a percentage of gross receipts. The corporations subject to such charges, are: (1) insurance companies, (2) banks, (3) telegraph companies, (4) telephone companies, (5) express companies.

Insurance companies, both fire and life, pay an annual license tax and also a gross-receipts tax. The annual fee is two hundred dollars for a fire insurance company and two hundred and fifty for a life insurance company. Both kinds of companies pay a two per cent. tax on their gross receipts, but if one quarter of the entire assets of the company is invested in certain prescribed securities, viz.: North Carolina state, county or municipal bonds, or mortgages on real property in the state, the rate of taxation on gross receipts is only one per cent.

With the exception of National Banks, every person or company doing a banking business is taxed according to the capital employed, as follows: On a capital of ten thousand dollars or less, twenty-five dollars and two dollars for each additional thousand dollars of capital; also twenty-five dollars additional for each county in which any of said banks may have an agency.

Telegraph, telephone, and express companies pay a two per cent. tax on gross receipts. No county or corporation may impose any additional tax except an ad valorem tax.

A franchise tax of fixed amount is levied on all " private business " corporations, except railroads, banks, and insurance companies, in proportion to their capital stock. This tax ranges from five dollars, for corporations having a capital stock of $25,000 or less, to $500 for those whose capital exceeds one million dollars.

Collection of Corporation Taxes. Taxes in North Carolina are ordinarily collected by the sheriff, who accounts with the county treasurers and the state treasurer. In general license taxes are also collected by the sheriffs, but the

license taxes on corporations are paid directly to the state treasurer. Certain corporations, viz.: railroads, banks, building and loan associations, telephone and telegraph companies, also pay the property tax directly to the treasurer.

State, county and municipal taxes on corporations in North Carolina are ordinarily " stopped at the source." In the case of state and national banks, the stockholders pay the county and municipal taxes while the banks pay the state tax.

Productivity of Corporation Taxes. Just what part of the state's revenue is derived from corporations cannot be ascertained since only certain kinds of corporations pay directly to the state treasury. In 1898, banks, building and loan associations, railroad, telegraph, telephone, canal and steamboat companies paid a general property tax amounting to $98,385.87 directly to the treasurer of the state. In the same year, banks, building and loan associations, insurance, telegraph, telephone and express companies paid license taxes amounting to $98,848.90. So the corporations paid in 1898, nearly $200,000 directly into the state treasury.

The great number of corporations, such as cotton mills, lumber mills, tobacco factories, etc., do not pay directly but indirectly through the sheriff as individuals do. They are therefore not included in the figures just cited. It would probably be an under-estimate to say that, out of nearly one million dollars of public taxes paid to the state in 1898, corporate property paid $300,000, or nearly one-third.

Poll Tax

In origin the poll tax is coincident with the beginnings of taxation in North Carolina. Until near the middle of the century, it furnished more revenue than the general property tax.[1] This was in large measure due to the fact

[1] In 1827, for instance, the tax on lands and lots yielded $25,948.41, while the poll tax yielded $27,446.82.

that the taxes on slaves could be collected by sale of the slaves. The great importance of the tax is clearly shown by the fact that all of the constitutional amendments of 1835 concerned the poll tax. These amendments provided that the capitation tax should be equal throughout the state, and that all free males over twenty-one and under forty-five years of age, and all slaves over twelve and under fifty years of age, should be subject to a capitation tax, and that no other person should be subject to such tax. The capitation tax on slaves was in lieu of any other tax on such property.

In 1852, a part of the revenue derived from the poll tax was applied to the support of a state asylum for lunatics and idiots. In the constitution adopted in 1868, the poll tax was devoted to the support of the public schools and of the poor.[1]

The state treasury no longer derives any revenue from this source, but the proceeds of the tax form a part of the school and poor fund of the county in which it is collected. Since, however, the rate is prescribed by the General Assembly, it may properly be considered a commonwealth tax.

Rate. The provision of the constitution authorizing the poll tax is mandatory. It declares, "The General Assembly shall levy a capitation tax on every male inhabitant in the state over twenty-one and under fifty years of age, which shall be equal to the tax on property valued at three hundred dollars." The Supreme Court has recently held that if a revenue act does not preserve this proportion, the tax on both property and poll is void.

The present state poll tax is $1.29. The counties also have the privilege of levying a poll tax, but the state and county tax together must not exceed $2.00.[2] Not more than one-fifth of the revenue thus raised can be appropriated to the support of the poor. By the Constitution

[1] Constitution of North Carolina, Art. 5, Sec. 1.
[2] Constitution of North Carolina, Art. 5, Sec. 1.

of 1868, the county commissioners are empowered to exempt from this tax any persons who are too poor or infirm to pay it.

Collection. Much difficulty is experienced in the collection of the tax. The law provides that, "if any poll tax or other taxes shall not be paid within sixty days after the same shall be demandable it shall be the duty of the sheriff, if he can find no property of the person liable, sufficient to satisfy the same, to attach any debt or other property incapable of manual delivery due or belonging to the person liable or that may become due to him before the expiration of the calendar year." By means of such attachments in the hands of employers and others, many poll taxes which would not otherwise be collectable are paid. But even with the aid of this device the tax is poorly collected. The auditor in his report for 1896 estimates that only two-thirds of the whites and one-half of negroes above the age of twenty-one pay poll taxes. So difficult is the collection of this tax that in 1897 the General Assembly enacted that persons or corporations failing to pay any tax laid on them by law shall be guilty of a misdemeanor and punished by a fine not exceeding five hundred dollars or imprisoned not exceeding six months. This law was aimed, of course, at the man without property, the citizen who is liable only to the poll tax. Taxes due by any citizen with property are collectable without fines or imprisonment. It is quite possible that this act did not fall within the Constitutional provision prohibiting imprisonment for debts, but the law does not seem to have been practicable and was repealed by the General Assembly of 1899.

The amount raised by the poll tax is next in amount to that raised by the general property tax. In 1898, the return from state and county poll taxes amounted to $365,738.27, or nearly one-half of the sum raised for public schools, exclusive of sums raised in the larger towns for graded schools. Besides the poll tax levied by state and county, incorporated towns also impose poll taxes in North

Carolina. In some cases, in fact, in most of the larger towns, the municipal poll tax is far in excess of the combined state and county poll tax.[1]

Criticism. The poll tax of North Carolina is clearly a regressive tax of a very heavy kind. It amounts frequently to doubling the rate on small property owners. Let us suppose, for instance, two property owners, one owning property worth $10,000 and another owning property worth $300. If we levy on each a property tax of one and two-thirds per cent. (an average municipal tax in North Carolina) and a poll tax of $5, this amounts to taxing the richer man at a rate slightly above one and two-thirds per cent., while the poorer man has to pay $10 tax, or at the rate of three and one-third per cent. If a poor man has no property and thus escapes the payment of the poll tax the very existence of this tax is an inducement to him never to acquire any property, since from his first savings, the state, county and city take away as much as the savings bank would pay him, if he had $300. If he only saves $100, they take far more than such bank would pay him. That this is a real and an important consideration is revealed by statistics from Wake County given by the auditor in his report for 1896. Over sixty per cent. of the tax payers of this county pay on less than $500 of real and personal property and the auditor estimates that eighty per cent. of the tax payers of the entire state pay on less than $500 worth of property.

On such persons the poll tax weighs heavily. The richer man does not feel it, the man with no property largely escapes it, but upon the small property owner it hangs as an incubus. It is not a tax proportioned to ability. It is not even, according to the theory of the general property tax, proportioned to wealth. In what manner its advocates

[1] The rates in some of the largest cities in North Carolina are as follows: Raleigh, $3.70; Winston, $4.05; Charlotte, $3.00; Wilmington, $3.96. These are the municipal poll taxes; to them must be added the state and county taxes, nearly always equal to $2.00.

would justify the retention of the tax, is not clear. To most people who favor poll taxes, the old idea of paying the state for a service rendered probably constitutes the best argument in its behalf.

As has been said above, the poll tax is mandatory and no General Assembly can refuse to levy it. There is urgent need of a change in the constitution permitting the tax to be laid only on persons not paying an equal sum on property. While such a tax would be theoretically far from a just tax, it would yet be an improvement on the present system and would lift the dead weight which hangs so heavily on the small property owner.

Income Tax

For a considerable period before 1860, the income tax was an important element in the fiscal system of North Carolina. Taxation of personal property was at first a tax on the income from such property; but since the adoption of the present constitution, personal property has been taxed in all respects as real property. The present importance of the income tax is slight.

The constitution of North Carolina authorizes the taxation of incomes, provided that no income may be taxed when the property is taxed from which the income is derived. Acting under the limitations of this provision, the General Assembly has imposed the following taxes on incomes:[1]

"On the gross profits and the income derived from property not taxed, five per centum; on the gross incomes derived from salaries and fees, public or private, one-half of one per centum on the excess over one thousand dollars; on the gross incomes derived from other sources except such as are derived solely from property taxed, one-fourth of one per centum on the excess over one thousand to five thousand dollars, one-half of one per centum on the excess

[1] Revenue Act of 1898, Sec. 6.

over five thousand to ten thousand dollars, one per centum on the excess over ten thousand to twenty thousand dollars, and two per centum on the excess over twenty thousand dollars."

The purpose of the law seems to be to divide taxable incomes into three classes: (1) Incomes from property not taxed, *e. g.* State and United States bonds; on this class the rate is very high—five per cent. (2) Incomes from salaries and fees; in this class, only the excess above one thousand dollars is taxed and at the fixed rate of one-half of one per cent. (3) Incomes from other sources, except such as are derived solely from property already taxed.

The "machinery act" which always accompanies the "revenue act" requires that the tax list of each individual shall contain: "The gross income of the party the twelve months next preceding the first day of June in the current year derived from property not already taxed by the laws of this state with a statement of the source or sources from which it was derived and also his income over one thousand dollars derived from salaries or fees or both." Here taxable incomes are classed in two groups only: income from untaxed property and income from salaries and fees above one thousand dollars. This is the construction of the revenue act followed in the lists sent out through the state to the list-takers.

It is evident that one important form of income has been neglected in this system, *e. g.* the income from business profits. The professional man and the wage earner are taxed upon incomes of more than one thousand dollars. The third kind of income enumerated as taxable in the "revenue act" would apparently include the income from business earnings, since such earnings are not derived solely from property taxed. Actual procedure is based upon an arbitrary interpretation of the clause of the "machinery act" quoted. It has always been the custom, under the present constitution, to regard all profits from business of any kind as derived from the capital invested in the

business, and since the capital is taxed, the income is regarded as falling under the constitutional exemption. This question has not been brought before the courts because of the common opinion that the General Assembly has not taxed such incomes.

Criticism. It may be seriously questioned whether the construction of the constitution commonly held is the true one. The merchant or manufacturer with a capital of $5000, who makes an annual profit of $2000, pays taxes on his goods and hence is exempt on his income. The interest on $5000 is $300 and the excess of the merchant's gain above the ordinary return to his capital is $1700; but the state imposes no tax on his income, while his clerk receiving a yearly salary of $1200 must pay $1.00 to the state treasury. In both cases the income is the return to ability. It is difficult to see why one kind of ability is taxed and another exempted.

The income tax has a place to fill in the fiscal system of North Carolina. It should measure the tax-paying capacity of personal skill and ability of all kinds. It is now imposed only upon productive skill of certain kinds. Can there be any reason why the tax should not be imposed on business skill, even though such skill be exerted with the aid of some form of property? The return is no less a return to the skill. The property used has its value easily ascertainable and the interest on it can be deducted from gross earnings and the return to ability be thus ascertained.

A consistent income tax would affect all citizens, farmers, merchants, manufacturers, the return to whose skill exceeded a certain amount. If in addition the tax were made gradually higher as the income increased in amount, the income tax would be a valuable adjunct of the inheritance tax in introducing the principle of progressivity into the tax system of North Carolina. As stated above, the question of the legality of such a tax has never been before the courts, but it is difficult to see how the constitutional provision would interfere with the recommendation here made.

Business incomes are not incomes from property but from skill.

The income tax yielded in 1898 only $3,876.20. In considerably more than one-half of the counties of the state, no person was reported as in possession of a taxable income!

Inheritance Tax

In 1847, the General Assembly passed an inheritance tax law which with many changes remained in force until 1874, when it was omitted from the revenue act. By the original act, the widow and lineal decendants of the decedent were exempt from the tax.[1] In 1855, the exemptions were extended to include the following: (*a*) lineal descendants, (*b*) widow, (*c*) father or mother, (*d*) wife or widow of a son of the decedent, (*e*) husband of a daughter of the decedent. By the law of 1855 the tax was graduated according to the degree of relationship: one per cent. for brothers and sisters, two per cent. for uncles, aunts, or their descendants, and three per cent. for more remote relatives and strangers.[2]

The law of 1847, imposed a tax on inheritance only when the real estate was of the value of $300 and upwards and the personal property equaled or exceeded $200. Just before the war, the exemption was decreased to $100 and in 1866 it was entirely dropped. The rate of the tax varied from time to time. During the war it was doubled, but in the main the rate imposed by the Code of 1855 was retained by successive Assemblies.

Under this law very small returns[3] were made although the method of collecting the tax was eminently practicable. Administrators and executors were required to pay the tax;

---

[1] Laws of 1846-'47, ch. 72.

[2] Revised Code of 1855, ch. 99.

[3] The amount of the returns cannot be determined because of the method in which the auditor's report was formerly made, but the present auditor informs me that the returns were "practically nothing."

but the great difficulty was that the law exempted nearly every possible devisee from its payment.

In 1897, a new inheritance tax law was enacted by the General Assembly, which promised to be much more productive as a fiscal measure. It imposed on all legacies and inheritances, devised or descended to persons in the direct line, a tax of two-thirds of one per cent., and on all legacies and inheritances devised or descending collaterally, except such as were for charitable uses, one and one-half per cent. No administrator or executor was permitted to file his final account unless and until such taxes were paid. In 1899, the General Assembly repealed this law and there is no inheritance tax in North Carolina at the present time.

Criticism. While the inheritance tax of 1897 was far better than none, it does not seem to have been planned in accordance with any sound theory of taxation. There seems to have been no attempt to make the new tax in any way supplementary to the forms of taxation at present in use in North Carolina, viz., the general property tax and the poll tax. Can the inheritance tax be made to supply the deficiencies of such taxes to any extent? We have attempted in discussing the poll tax to show that this charge falls more heavily on the poor man than on the rich one. The same thing is true of the general property tax. To tax a poor man's holdings at the same rate as the richer man's can only be justified by the fact that the general property tax is a tax on property and not on ability. If taxation is to be just, the poll tax and the general property tax, the one a regressive tax and the other a constant tax, must be compensated for by some tax which will fall more especially on the property of the rich. The taxes which are especially fitted for use as compensatory or equalizing taxes are the inheritance and the income tax. The income tax is not used as an equalizing tax in North Carolina on account of supposed constitutional limitations. The inheritance tax is consequently left as the sole tax available for this purpose.

In order that the inheritance tax may accomplish its purposes as an equalizing tax, it is necessary in the first place that there should be an exemption of estates up to a certain amount, and that, in the second place, the rate should beyond that amount be progressive. There can be little doubt that the Supreme Court of North Carolina would declare such a tax constitutional. In the case of Pullen *vs.* Commissioners,[1] the court held that the inheritance tax was not a tax on property but was a tax on the succession. In this case, objection was made to the inheritance tax on the ground that it violated the constitutional provision requiring all property to be uniformly taxed. The court declared on this point:

"Undoubtedly if the tax in question must necessarily be regarded as a tax on property, the objection would be irresistible, since this property is not only taxed uniformly with the other property, but is subjected to taxation as a legacy in addition. But we do not regard the tax in question as a tax on property, but rather as a tax imposed on the succession, on the right of the legatee to take under the will, or of a collateral distribution in the case of intestacy. . . . Is there any reason why the state shall be denied the power to tax a succession whether it be by gift *inter vivos* or by will or intestacy? Property itself as well as the succession to it is the creature of positive law. The legislative power declares what objects in nature may be held as property; it provides by what forms and on what conditions it may be transmitted from one person to another; it confines the right of inheriting to certain persons whom it defines as heirs, and on the failure of such, it takes the property to the state as an escheat.

"The right to give and take property is not one of those natural and inalienable rights which are supposed to precede all government and which no government can rightfully impair. There was a time at least as to gift by will, when it did not exist; and there may be a time when it will

[1] 66 North Carolina Reports, 36.

seem wise and expedient to deny it. These are the uncontested powers of the Legislature upon which no article of the Constitution has laid its hands to impair them. If the Legislature may destroy this right, may it not regulate it? May it not impose conditions upon its exercise? And the condition it has imposed in this case is a tax." [1]

Under this decision there is ample scope for the adoption of an inheritance tax to act as the much-needed balance wheel in the tax system of the state. The distinction which the court has so forcibly drawn between a tax and a regulation of inheritance, leaves the General Assembly free to fashion an inheritance tax without being cramped by constitutional provisions. The inheritance tax ought to become in North Carolina the safety-valve of the tax system. It is impossible to estimate the probable yield of such an inheritance tax. But we may be sure that the returns would be sufficient to lighten appreciably the heavy load of regressive taxation.[2]

Conclusion

The basis of state taxation in North Carolina must remain for some time to come the general property tax. Constitutional provisions and economic conditions both lead to that conclusion. The practicable reform of the tax system of the state is along two lines: (1) the better assessment and collection of the general property tax itself; (2) the adoption and extension of such taxes as will counterbalance the lack of progressivity characterizing the general property tax.

The chief fault of the general property tax in North

[1] Quoted in Dr. Max West's "Inheritance Tax," pp. 98-99, in *Columbia College Studies in History, Economics and Public Law*, vol. iv.

[2] The return for 1898 from the now repealed inheritance tax law passed in 1897 was only $98.18, but there is reason to believe that the smallness of the amount was largely due to the lack of familiarity with the law on the part of the officers charged with its execution.

Carolina is, as has already been shown, the allowance of an exemption of debts to the taxpayer. With this removed, there is every reason to believe that a more honest return of solvent credits would be made than under the present system wherein the law favors fraud by rendering it impossible of detection. Even with this loophole of fraud closed, evasion of taxation will undoubtedly go on to a considerable extent. So long as large gains can be made by perjury, some personal property will go untaxed. It might be worth a trial, to see if lower rates of taxation would not bring in larger net revenues. In other words, might it not be better to differentiate the forms of taxable property, and to tax personalty at a lower rate than realty? The greater part of the personal property escaping taxation is undoubtedly held in the towns and pays a high municipal tax in addition to the state and county charges. For example, in 1897, the rates for state, county, and municipal purposes paid by citizens of Raleigh, Charlotte, Wilmington, and Winston, are, respectively, $2.28, $2.10, $2.52 and $2.31⅔ on the $100.00. Thus, in the towns, where the bulk of property which can escape taxation exists, the temptation to list falsely is strongest. If, on such property, the tax was exclusively a state tax, very much lower than at present, it might reasonably be hoped that the returns would be greater. Such a change would require a constitutional amendment in North Carolina and is not to be looked for in the near future.[1]

As an abstract principle of justice it may be held that personal property should always pay exactly the same tax as real property. At any rate, the constitution of North Carolina so asserts. But abstract principles and practical measures are frequently at variance, and it is surely of little satisfaction to the honest taxpayer to have the consolation of knowing that whether his neighbor escapes or not, still the abstract truth is enunciated by the constitution.

[1] The first taxation of personal property in North Carolina was made in the manner recommended here, an income tax being levied on the returns from money invested in certain ways.

The taxes which may be regarded as counterbalancing the lack of progressivity in the general property tax are the inheritance and the income tax. The need for these taxes is still further increased by the presence of the poll tax, characterized not only by lack of progressivity but by positive regressivity. The manner in which the poll tax is imbedded in the constitution, and the central position which it holds in the tax system of North Carolina indicate that the likelihood of its repeal is not imminent. The prevalent sentiment is that every person, however poor, should contribute something to the support of the government. But even if we admit this contention, it by no means follows that the rate of taxation on the poorer members of the community should be higher than that on the richer ones. A simple method by which the regressivity of the poll tax, a fault inherent in that fiscal devise, may be corrected, is the inheritance or the income tax or some other tax equally capable of being made progressive. Under existing circumstances, the inheritance tax would seem to be the one best fitted to perform this service in North Carolina, and it is to be hoped that the tentative inheritance tax law of 1897 may be reenacted in a better form. As has been pointed out in discussing the income tax, a tax on business incomes would also help to counterbalance regressivity.

In the matter of corporation taxes, the future development is probably foreshadowed by the present situation. The taxation of certain corporations, such as railroad, telegraph and telephone companies, is peculiarly fitted for state purposes. Although the provision of the constitution requiring the "uniform taxation of real and personal property" prevents the special taxation of corporations by the state, yet the methods of assessment need not be the same as those for other forms of property. Railroads are assessed by a board of commissioners, banks are assessed on a valuation of capital stock, and it is not a far step in the future to the assessment of the property of all corporations by methods more adequate than those now employed.

When this is done, all corporation taxes can be paid directly into the state treasury. Thus the way will probably be paved in time for the exclusive taxation of corporations by the state.

[Bibliographical Note.—1. Laws of North Carolina, collected by James Iredell, Esq., Edenton, N. C., 1791. 2. Revisal of "Laws of North Carolina," by François Xavier Martin, 2 vols., Newbern, N. C., 1804. 3. Collection of the Statutes of the Parliament of England in Force in the State of North Carolina, by François Xavier Martin, Newbern, N. C., 1792. 4. Laws of North Carolina, revised by H. Potter, 2 vols., 1822. 5. Revised Statutes of the State of North Carolina, by James Iredell and William H. Battle, 2 vols., Raleigh, N. C., 1837. 6. Revised Code of North Carolina, by B. F. Moore and Asa Biggs, Boston, 1855. 7. Acts of the General Assembly of North Carolina. 8. Reports of the Auditor of North Carolina. 9. Reports of the Treasurer of North Carolina.]

III.

TAXATION IN KANSAS[1]

By ELBERT JAY BENTON

Economic Characteristics

The industrial development of Kansas bears a close relation to the physical characteristics of the state. There are few great river valleys and almost no navigable rivers, yet here as elsewhere the first lines of settlement followed the streams. Along the Missouri river on the west bank early arose such towns as Westport, Leavenworth, Atchison and Wathena, while along the Kansas river extended a line of settlements marked by Lawrence, Lecompton, Topeka and Pawnee. To a less extent the valleys of the Neosho and the Osage rivers with their tributaries directed the extension of civilization into the new territory. The building of railroads across the plains turned the lines of settlement from the rivers and led to the more speedy settlement of the entire region. This fact is clearly shown to-day in the line of towns that extends across the state along the railroads first built. A map of Kansas shaded to show the

[1] In addition to the acknowledgment made in the bibliographical note, the author wishes to express his obligation to those who have kindly assisted him in gathering material for this study. Special thanks are due to Mr. F. G. Adams, Secretary of the Kansas State Historical Society, and his assistants, for valuable aid in making accessible all matter in their charge; for the same reason, to Mr. James L. King, State Librarian, Topeka, Kansas, and to the authorities in charge of the Law Institute, Chicago, Illinois, for the use of their valuable collection of Kansas statutes; and to many others, the unofficial character of whose aid renders this public acknowledgment impossible, but whose assistance is none the less remembered.

density of population discloses several dark bands running the entire length of the state, with here and there cross bands. These in each case mark some railroad line. The Gulf, the Sante Fe, the Union Pacific, the Missouri Pacific, and the Rock Island systems show this grouping of settlements most clearly.

The economic interests of the people of Kansas until recently have been confined almost wholly to agriculture and grazing. The development of irrigation systems in the western part has only augmented this condition. The federal census of 1890 reported 61.42 per cent. of the male population of Kansas as engaged in agriculture. The remaining 38.58 per cent. was distributed among various pursuits; 4.14 per cent. in the professional class; 8.66 per cent. in domestic and personal service; 14.45 per cent. in trade and transportation; leaving 11.33 per cent. engaged in manufacturing and mechanical trades.[1]

The population of Kansas is mainly rural. In 1890 only about 12 per cent. of the people lived in cities of 8000 population or more. This small proportion of urban population becomes apparent when it is remembered that the average proportion for the entire United States is 29.20 per cent. Recently the urban population of Kansas has increased very rapidly, doubling in the last ten years. In 1870 the proportion of urban to rural population was 7 per cent.; in 1880 the proportion was 6 per cent.[2] The recent opening up of valuable zinc and coal deposits in the southeastern part of the state, and the rich gas belt now being developed have attracted manufacturing plants and point to great possibilities in industrial activity.

The character of its population has affected the economic history of the state to a marked degree. The territory was born amid the throes of civil strife and raised to statehood when revolution threatened to destroy the Union. For more than a decade it was the scene of a bitter war, during

[1] 11th Census, Vol. 50, part 4, p. 379.
[2] Statistical Atlas of the United States (1898), p. 15.

which people from all sections immigrated thither. In many cases these were men with lost fortunes to regain; young men without capital and often without family interests who had come there to carve out new careers. In every case they were the bolder, restless adventurers of the East.

The early years were years of hardship, political unrest, and slow progress, and even now Kansas has not entirely outgrown these necessary accompaniments of the beginnings of every commonwealth. It is still a new state. Its cities are small; its farms are large, and everywhere the comforts of the North and East are just being introduced. Farming is done on the extensive rather than the intensive plan, and thoroughness is often lacking. The people are prone to undertake new and bold business adventures. Enterprises are projected that never get any farther than the magnificent charter of promise that is filed with the secretary of state or the paper which is wasted in planning them. That conservatism for which the older sections of a country are noted is still in a great degree absent.

Undoubtedly the character of the people has been greatly influenced by climatic conditions. The extremes to which this region is subject, both in temperature and moisture, have developed popular disquiet, and the spirit of unrest has often lead to radical political changes. But this striving after new things has not proven harmful to fundamental institutions, and the peace and prosperity of the state have at no time been seriously endangered. The financial affairs of the state, on the contrary, stand practically as they were first instituted. The financial policy of Kansas was modeled in the beginning after eastern and northern states, and it has changed little in the years that have elapsed.

At times mortgages on the farms have been heavy, but these have been paid off rapidly during the past years. Eastern capital was necessary to develop the resources of the state, but now that these have been opened up, capital from the east is no longer indispensable, and the state is

undoubtedly entering upon a period of unusual financial prosperity. For a long time an unequal struggle was in progress in the western sections.[1] The farmers were struggling to make the soil bring forth the products of the middle north. This was not possible. Now that the new generation is becoming acclimated, as it were, the old story of absolute failures is not likely to be repeated. The farmers are learning to raise the right thing in the right place. Progress in irrigation, in subsoiling, and in working the soil so as to conserve most of the rainfall, are other elements in bringing about economic prosperity. The depression resulting from unnaturally rapid expansion of cities has been overcome. The "boom towns" have adjusted themselves to the resources of their environment and are now steadily growing. These conditions indicate increasing economic stability.

General Finances

The eleventh biennial report of the state treasurer for the fiscal year ending June 30, 1898, shows that the total receipts for the year were $2,760,322.15, while the total expenditures for the same period were $2,672,083.36. Of the total receipts, $1,413,695.08 was derived from the general property tax. The insurance department contributed in license fees $33,380.02 and the fees paid to the various other executive officers increased the amount by $62,434.27. Thus the total state income from sources which may be

[1] It is not uncommon to find entries like the following in the legislative annals of Kansas:

"April 16, 1861, Report of W. F. M. Arny to the Legislature that relief goods have passed through his hands weighing 9,197,300 lbs. Of this amount, 3,051,304 lbs. were for seed. The money was furnished by the legislatures of New York and Wisconsin and the New York City committee. In addition $22,481.93 has been expended" (Annals of Kansas, p. 261). Even to this day the treasurer keeps a seed-grain fund which is the payment of seed-grain warrants, *i. e.* loans to the western sections of the state to purchase seed grain. During the year 1897 there was paid to the state on this account $6401.19.

classed under the head of state taxation, was $1,509,509.37. The state penitentiary earnings for the year were $48,030.05. The state board of charities contributed from the various institutions under its control, $4,579.94.[1] The United States contributed to the aid of the Soldiers' Home $12,450, and to the agricultural college $23,000. From the payment of principal and interest upon state bonds held to the credit of the various school funds was received $844,283.74. During this same period the income derived from the public school lands was $220,929.13. The municipal interest account was $43,301.34. These statements show that about 54 per cent. of the state revenue was derived from taxation in one form or other, and that about 40 per cent. accrued from the bond and land account. As the greater part of the receipts from interest on bonds and lands go directly to the public schools, it is clear that the state must depend almost wholly upon taxation to maintain its charitable and penal institutions, to pay its legislative, judicial, and executive expenses, and to defray all other expenditures.

Of the total disbursements for the fiscal year 1898, $1,281,805.81 was charged to the general revenue account; that is, was expended for the support of state charitable and penal institutions and the executive and judicial departments. $39,689.55 was expended upon the state capitol building; $1,130,421.30, for educational purposes; $34,211.14, for the Soldiers' Home; $50,000 of the state bonds were paid; $40,651.90 was paid as interest upon the state debt; $33,913.04, on state grain inspectors' warrants; and $30,142.88, for the municipal interest account. As there was no session of the legislature during 1898, the general expenditures were considerably less than for the year preceding. On June 30, 1898, there was a balance in the treasury amounting to $412,151.63.

[1] This merely means that it paid into the treasury all receipts accruing during the year. In this case, as in that of the fees paid to state officers, all moneys were paid into the general revenue fund and from that allotted to the various purposes of state expenditure by legislative appropriation.

The public debt of Kansas is insignificant when compared with the debts of many of the older states. The constitution provides that the state may contract public debts for the purpose of defraying extraordinary expenses and making public improvements. But such debt must never exceed in the aggregate, one million dollars, unless the proposed measure for creating the debt shall have first been submitted to a direct vote of the electors of the state at some general election and have been ratified by a majority of the voters. A law creating a debt must at the same time provide for levying an annual tax sufficient to pay the annual interest of the debt and the principal thereof when due. The state is also prohibited from ever becoming a party to carrying on any works of internal improvements.[1]

The present state funded debt is $632,000. Of this the permanent school fund owns $589,000, and the university permanent fund $9000, leaving $25,000 in the hands of individuals and corporations. The $25,000 held by individuals and corporations will fall due January 1, 1899, and the last legislature provided that the bonds be refunded at four per cent., and authorized the school fund commissioners to purchase them should the revenue fund be insufficient money to pay them off.[2]

---

[1] Acts of the legislature authorizing counties to subscribe for stock in railroad companies, and to issue bonds to pay for them have, however, been declared constitutional and valid (Leavenworth Co. *vs.* Miller, 7 Kansas, 479; Morris *vs.* Morris Co., 7 Kansas, 576). In this way a great majority of the railroads of Kansas have been assisted in construction. Thus indirectly the legislature of the state has defeated the ends of the constitutional limitation. For it was clearly designed that the people of the state should not be burdened with taxation to pay for enterprises which could be conducted by private persons. In consequence the local debts and not the state debts of Kansas are burdensome.

[2] See Report of State Treasurer, Sept. 1, 1898. In response to an inquiry, the State Treasurer, under date of September 25, 1899, states "that the $25,000 that you particularly inquire about being an indebtedness held by individuals or corporations has been paid and that the state owes no money at this time, except what it owes to the Permanent School Fund. The state owes the Permanent School Fund at this time $484,000."

The state debt of Kansas is thus in excellent condition. The rate of interest is reasonable. The amount and distribution of the dates of maturity render the speedy payment of the total debt possible if it is desired, while within a very short time the whole will be in the hands of the school fund commissioners. Thus whatever interest is paid returns directly to the people in the support of the public school system. With the state debt so well disposed of, the state capitol practically finished, the state institutions well established and supplied with buildings, and the remarkable growth of state resources, state taxation in Kansas should cease to be onerous.

The real burden of indebtedness in Kansas is in the form of municipal debts and mortgages on real estate. Municipal indebtedness in 1898 amounted to $30,301,202.[1] Indeed, so serious has this craze for local improvements become that every governor's message to the legislature from 1885 to 1891 contains strong words of condemnation and warning on account of the increase.[2] No statistics of real estate mortgages later than the federal census of 1890 are obtainable. At that time the aggregate mortgages on Kansas real estate was $243,146,826. Only five states, New York, Pennsylvania, Illinois, Massachusetts and Ohio exceeded this amount. 60.37 per cent. of the taxed area was covered by mortgages. No state exceeded this, Nebraska and South Dakota coming nearest with 54.73 and 51.76 per cent., respectively. The mortgage debt was 26.83 per cent. of the true value of the real estate.

A summary of state expenditures and receipts for the year 1897-98 is here appended:

---

[1] See Report of Auditor, 1898, p. 186.

[2] The Governor of the state addressing the legislature, Jan. 16, 1889, when the aggregate county, township, city and school indebtedness was $31,107,646.03, with an average interest of 6 per cent., says: "This means an annual tax of $1,866,458, or a levy equal to five and one-fourth mills on the dollar on the present assessed value of all taxed property in the state. This interest charge alone exceeds the state levy for the year 1888 by $418,140.63." Documents of House, 1887-8, p. 20.

EXPENDITURES.

General Revenue Warrants	$1,281,805.81
State-house Fund Warrants	39,689.55
Current University Fund Warrants	11,766.06
Permanent School Fund Warrants	546,522.96
Annual School Fund Warrants	438,672.31
University Permanent Fund Warrants	20,150.00
University Interest Fund Warrants	5,684.92
Normal School Permanent Fund Warrants	25,118.00
Normal School Interest Fund Warrants	15,250.00
Agricultural College Permanent Fund Warrants	41,640.55
U. S. Endowment Warrants	23,000.00
Agricultural College Interest Warrants	25,616.50
U. S. Aid State Soldiers' Home	34,211.14
State Bonds paid	50,000.00
State Coupons paid	40,651.90

RECEIPTS.

Direct Tax	$1,413,695.08
Insurance Department	29,517.52
Seed-grain Warrants	7,793.30
Secretary of State, Fees	2,188.75
Auditor of State, Fees	942.45
Bank Commissioner, Fees	6,742.40
Penitentiary Earnings	48,030.05
Oil Inspector, Fees	9,384.46
State Board of Charities	4,579.94
Grain Inspector	41,977.85
U. S. Aid, State Soldiers' Home	12,450.00
U. S. Aid, Agricultural College	23,000.00
Payment of Bonds, Permanent School Fund	412,815.19
Payment on Lands, Permanent School Fund	85,799.31
Interest on Permanent School Bonds	315,426.00
Interest on Land Sales	121,711.68
Insurance Department	3,862.50
Payment of Bonds, University Bond	16,330.33
Payment on School Land, University	2,030.26
Interest on Bonds, University	7,381.25
Payment of Bonds, Normal School	15,811.20
Payment on Lands, Normal School	2,764.85
Interest on Bonds, Normal School	7,265.95
Interest on Land, Normal School	7,774.57
Payment of Bonds, Agricultural College	41,994.25
Interest on Bonds, Agricultural College	27,259.49

Development of Taxation

The settlement of Kansas was a part of that westward movement which followed the discovery of gold in California. The route of travel to the gold fields of the Pacific lay across this region, then a large Indian reservation. During the year 1849, 30,000 people are estimated to have crossed this district, and in 1850 the number increased to 60,000.[1] This was the beginning of an immense prairie commerce. Up the valleys of the Platte and Arkansas rivers passed an unbroken stream of immigrants and freight wagons. The result was to acquaint the North and South with this long unknown section just at a time when the South was desperately in need of more territory if it were to retain its balance of power in the Senate. The territory included in Kansas had been acquired by the acquisition of Louisiana and by purchase from Texas. After the admission of the state of Missouri that part of the territory of Missouri now in the state of Kansas had no distinct government until 1854,[2] while the part of the present state south of the Arkansas river and west of 100° west longitude had no organized government of its own after the admission of Texas in 1845. The act of Congress finally passed in 1854 provided for the organization of that portion south of the 40° parallel into Kansas Territory.[3] This precipitated the contest between the North and the South for the privilege of giving to the new territory the institutions peculiar to each section.

No attempt can here be made to follow this contest, nor the guerrilla warfare, waged upwards of ten years, which accompanied it. It is sufficient for our purpose to note that out of this struggle Kansas emerged into statehood with all her institutions practically organized. Three unsuccessful attempts were made before a constitution was finally adopted by the people and accepted by the Federal

[1] J. N. Holloway, History of Kansas (1868), p. 93.
[2] Poore's Charters and Constitutions, p. 1164.
[3] *Ibid.*, p. 569.

Government. Indeed the sanction of Congress could not then have been obtained had not the southern members withdrawn. In these instruments can be traced certain definite evidences of the contest of the South and North for control in methods of taxation and finance.

The Kansas and Nebraska Bill of 1854 limited the legislative power of the territory. "No tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the land or other property of residents."[1] In addition to this the usual provision was made for the payment of the salaries of territorial officials out of the U. S. Treasury, and the promise was inserted that the customary appropriations for the erection of suitable buildings at the seat of government and for the purchase of a library would follow.[2] The United States Congress in carrying out this promise seems to have had in view a definite policy with respect to territories, and appropriations were made corresponding with those for the territory of Minnesota. Notwithstanding the good intention of Congress the money was expended injudiciously by the territory and even the work on a state capital at Pawnee was soon abandoned.[3]

The first census of Kansas showed a total taxable population of not far from 3000.[4] The legislature met for the first time July 2, 1855, at Pawnee, and to this assembly is to be credited the beginning of fiscal legislation. The bulk of the general laws enacted were exact transcripts of the Missouri code. Provision was made for the exemption from taxation of all widows and minor orphans, possessing

[1] Poore's Charters and Constitutions, p. 576.

[2] *Ibid.*, p. 579.

[3] A contemporary record for Nov. 7, 1855, states "Owen C. Stewart is discharged as Superintendent of the Capitol. The $50,000 appropriated by Congress had been expended but the walls of the building had been abandoned only a few feet above the foundation." (Annals of Kansas, p. 111.)

[4] The census of 1855, made by order of the Governor, gave a total population of 8601, with 2905 voters. Census completed Feb. 28, 1855. (Kansas Report in Doc. of H. of Rep. 1856.)

property worth not more than $1000.[1] The payment of a tax was made a qualification for voting, the act stipulating that "Every free white male citizen of the U. S. and every free Indian who is made a citizen by treaty or otherwise, and over the age of twenty-one years, and who shall be an inhabitant of the Territory, and of the county and district in which he offers to vote, and shall have paid a Territorial tax, shall be a qualified elector for all elective offices."[2] The spirit of this law was practically evaded. Any man of proper age who was in the territory on the day of the election, and who had paid one dollar as a tax to the sheriff, who was required to be at the polls to receive it, could vote as an inhabitant,[3] although he had breakfasted in Missouri and intended to return there for supper.[4] Manifestly as a source of revenue this measure was of no importance, and it is only in its political significance that it is worthy of record. At the election of October 1, 1855, for delegate to Congress where citizens of Missouri voted in great numbers, there is evidence that many of them failed to pay the dollar tax required.[5] Everywhere the tax was unsatisfactory in operation. In many cases it was the cause of grievous complaint and later it even led to organized military preparations to prevent its collection altogether.[6]

The revenue law of 1855 provided for a levy on real and personal property to the amount of ⅙ per cent. of the assessed value, and for a poll tax of 50 cents upon all persons between the ages of 21 and 55 years.[7] At this time the assessment was made by a county assessor appointed by

[1] Statutes of Kansas Territory, 1855, p. 658.

[2] Act passed Aug. 29, 1855; repealed Feb. 20, 1857. Code of 1856, p. 322.

[3] Code of 1856, p. 33.

[4] Kansas Affairs, 1856, Documents House of Rep. No. 200, p. 44.

[5] At Baptiste Paola, Lykins county, some Indians voted, the whites paying the dollar tax for them. *Ibid.*, p. 45.

[6] See letter of Gov. Walker to Sec. Cass, Aug. 19, 1857; found in Kansas Historical Collections, Vol. V, p. 376.

[7] Laws of 1855, Sec. I, Art. II, Ch. 137, p. 658.

the county court for a term of one year.[1] The sheriff was *ex officio* collector within each county of all revenue, and paid over the proceeds to the county treasurer.[2] Then as now the county court constituted a board of equalization to hear and determine finally all appeals and to correct and adjust the tax book accordingly.[3] But at this time conditions did not require the raising of much revenue, nor could any considerable amount have been raised if it had been required.[4]

While the first two sessions of the territorial legislature were busily trying to organize a territorial government modeled after the southern states and particularly after the near neighbor Missouri, the anti-slavery party was attempting to frame a constitution at Topeka and to secure its ratification. This constitution which failed to be accepted by the United States was a strong anti-slavery document, and declared against the policy of limiting electors to taxpayers.[5] An examination of its fiscal provisions shows that the political leaders in the West had profited by the experience of the older states, for the state is forbidden to give or loan its credit to any individual, association or corporation, or to contract a debt for extraordinary expenditures exceeding one hundred thousand dollars unless au-

---

[1] Statutes of Kansas Territory, 1855, p. 659.

[2] Statutes of 1855, pp. 665, 670.

[3] Statutes of Kansas Territory, 1855, p. 664.

[4] "Levying public taxes at this time at least to any considerable extent, before our people have secured title to their lands, or realized their products, would be undesirable, unless absolutely necessary." Extract from Gov. Reader's Message to Ter. Leg., July 31, 1855; in Pub. Kan. St. Hist. Soc., Vol. V, p. 195.

"Desolation and ruin reigned on every hand; homes and firesides were deserted; the smoke of burning dwellings darkened the atmosphere; women and children, drawn from their habitations, wandered over the prairies and among the woodlands, or sought refuge and protection even among the Indian tribes." (Gov. Geary in Senate Doc. 1st Sess. Thirty-fifth Cong., No. 17, p. 200.)

[5] "The payment of a tax shall not be a qualification for exercising the right of suffrage." Sec. 19, Const. 1855; Poore's Charters and Constitutions, p. 580.

thorized by a direct vote of the people.[1] The exemption list included personal property to an amount not exceeding one hundred dollars for each head of a family. In other particulars the list did not vary greatly from the present exemption law. The instrument also affords striking evidence of the reaction against the loose commonwealth banking laws of the preceding period. One clause went so far as to declare that "every bank or banking company shall be required to cease all banking operations within twenty years from the time of its organization and promptly thereafter to close its business."[2] An issue of script to the amount of $15,265.90 to provide for general expenses was also authorized by this first free state legislature ("Topeka Legislature"). This legislature was never recognized by the Federal government; its laws were inoperative and the script was never paid.[3]

In 1857 another attempt was made to form a constitution acceptable to Congress, and this time the pro-slavery party was responsible.[4] By this constitution the state debt that could be contracted for extraordinary expenditures was limited to $50,000. The legislature was vested with power to levy an income tax, and to tax all persons pursuing any occupation, trade, or profession. This was undoubtedly due to the influence of the settlers from the southern seaboard and indicates how during these years not only slavery but the whole fiscal as well as political system of Kansas was in the balance. In another clause[5] provision was made that, "The legislature shall levy a tax on all railroad incomes, proceeding from gifts of public lands, at the rate

[1] Poore's Charters and Constitutions, p. 589.

[2] See Art. XVII, Sec. 7, Constitution of 1855; in Poore's Charters and Constitutions, p. 589.

[3] See Annals of Kansas, p. 70.

[4] The attitude of the new constitution upon the slavery question was expressed in the clause in the Bill of Rights reading, "Free negroes shall not be permitted to live in this state under any circumstances." (Poore's Charters and Constitutions, p. 610; Const. 1857, Bill of Rights, cl. 23.)

[5] Art. X, Sec. 6, Poore's Charters and Constitutions, p. 607.

of ten cents on the one hundred dollars." The state government was pledged to carry on improvements in relation to road, canals, and navigable rivers at public expense to whatever practicable extent the development of the country might demand.[1] For the assessment of real property the legislature was required to classify the lands of the state into three distinct classes, to be styled respectively, class one, two, three; and land in each of these classes was to have a fixed monetary value upon which there was to be assessed an ad valorem tax.[2] A capitation tax upon all able-bodied men from 21 to 60 years was imposed,[3] and a single state bank of discount and issue with not more than two branches was to be incorporated if the majority of the electors were favorable.[4]

The third attempt to form a constitution was made in 1858. All the influence of the older southern states so conspicuous in the previous attempt of the pro-slavery party was entirely absent from this instrument. The limit of the state debt for extraordinary purposes was therein fixed at $100,000,[5] and the state was forbidden to contract any debt for purposes of internal improvements.[6] The instrument even went so far as to declare, "the levying of taxes by the poll is grievous and oppressive, therefore the general assembly shall never levy poll tax for county or state purposes," and this in opposition to the pro-slavery party poll tax system as then levied.[7]

In the next year, 1859, was framed the constitution finally accepted by Congress and ratified by the people. This was the anti-slavery constitution of Wyandotte. Examination of its financial provisions will be deferred to the con-

---

[1] Constitution of 1857, Art. X, Sec. 6, Poore's Charters and Constitutions, p. 607.
[2] Constitution of 1857, Art. X, Sec. 4; *ibid.*, p. 607.
[3] Constitution of 1857, Sec. 5, Art. X; *ibid.*, p. 607.
[4] Constitution of 1857, Sec. 5, Art. X; *ibid.*, p. 607.
[5] Constitution of 1858, Art. X, Sec. 3; *ibid.*, p. 623.
[6] Constitution of 1858, Art. XI, Sec. 5; *ibid.*, p. 623.
[7] Constitution of 1858, Sec. I, Art. XI; *ibid.*, p. 623.

sideration of existing tax methods in Kansas. It should be noted at this point, however, that northern and western influences prevailed here as they have since done, and so far as its fiscal system is concerned Kansas was made a northern and not a southern state.[1]

The early reliance upon the general property tax was continued during the territorial period. In 1858 the legislature imposed a general property levy of 3 mills on the dollar and a capitation tax of $1.00.[2] This law exempted personal property to the amount of $200,[3] and permitted the deduction of all debts from taxable property. Two years later the capitation tax was reduced to 50 cents upon every white male over 21 years of age.[4] In 1858 the old law making the sheriff the collector of taxes was repealed and the town and township treasurers became the collectors of all taxes, local and territorial. At the same session of the legislature the county assessor appointed by the county court was replaced by township assessors elected for a term of one year.[5] This system of assessment only continued two years when a county assessor elected annually at the November election was created. Deputy assessors, authorized by the county commissioners, were appointed by the county assessors.[6] An additional tax exemption to the amount of $500 was accorded by the same revenue laws to the property of all widows.[7]

---

[1] The constitution of Kansas was modeled after that of Ohio. This fact is undoubtedly explained by the composition of the Wyandotte convention. The distribution of the members was as follows: Pennsylvania 6, Massachusetts 2, Ohio 14, Kentucky 5, Ireland 1, Maine 2, New York 4, Germany 1, Indiana 6, Virginia 1, New Hampshire 3, Vermont 4, England 1 and Scotland 1. Thus Ohio had by far the largest representation, in addition to the fact that the chairman of the committee on finance and taxation was an Ohio lawyer.

"The Constitution of Ohio is adopted as a model or basis of action, receiving 25 votes to 23 for Indiana and one for Kentucky." Proceedings of Const. Convention, in Annals of Kansas (1859).

[2] Laws of the Territory of Kansas, 1858, p. 344.

[3] *Ibid.*, p. 350.

[4] *Ibid.*, 1860, p. 176.

[5] *Ibid.*, 1858, p. 388.

[6] *Ibid.*, 1860, p. 65.

[7] *Ibid.*, p. 114.

As early as 1858 the attempt was made to equalize the territorial taxes among the various counties by a regularly constituted board. This territorial board of equalization was composed of the secretary of state, the treasurer and the auditor. Then, as later, the board could equalize but not reduce the aggregate amount.[1] This board has remained unchanged in composition and duties throughout the years that have followed. The law was reenacted in 1860,[2] and in 1861 the body was made a state board.[3]

The trend of territorial legislation was thus towards the development of the general property tax as the main source of revenue. Kansas was entirely dependent upon agricultural and grazing interests and consequently could look no where else for public revenue. The capitation tax never formed an important source of income. A statement of the state taxes for the year 1861 will illustrate the relative amount of state income from the two taxes at the beginning of the statehood period:

Total valuation	$24,737,563.09
Capitation tax	4,115.75
General property tax	74,233.53
Total tax receipts	$78,328.28

It will be seen that 95 per cent. of the tax income was derived from the general property tax. At that time the levy was 4 mills on the dollar and the proceeds of the capitation tax formed the highest amount paid during any one year.

Prior to 1861 domestic feuds made possible the escape of large numbers of persons from taxation.[4] The capitation tax was especially odious to the opponents of the anti-slavery government, and on the other hand the free state

[1] *Ibid.*, 1858, p. 379. [2] *Ibid.*, 1860, p. 218.
[3] *Ibid.*, 1st Session, p. 156.
[4] "Yesterday resolutions were adopted by a public meeting at Lawrence to resist the assessment for a territorial tax." Letter of Gov. Walker to Secretary of State Cass, Lecompton, June 2, 1857, in Kansas State Historical Collections, Vol. V, 326.

men never paid a cent of the territorial tax levied by the bogus legislators of 1855. The tax then imposed remained charged against the various counties, with interest accumulating until the legislature of 1867 canceled it. During the entire period, the treasury suffered from the unstable condition of the state government. Several of the counties contended that the county board of supervisors had the power to remit the territorial taxes on account of illegal assessments, without supplying the deficit thus created. One county authorized the county treasurer to withhold two hundred dollars of the territorial taxes then in his hands to be refunded to such persons as had paid a double tax. Another county relinquished the territorial tax on account of irregular assessments. Neither of these counties took steps to supply the deficits thus occasioned.[1]

The inauguration of the state government may thus be said to have taken place at a time most inauspicious for the establishment of public credit. The people of the territory had been impoverished by the misfortunes of a bitter

[1] This refusal of counties to furnish their quota of the tax continued to be a source of great financial embarrassment to the officials until well down into the state period. A statement of territorial finances from 1856 to 1861 is here presented:

To amount revenue paid into Treasury in	1856	$ 1,811.38
" " " " " "	1857	3,383.09
" " " " " "	1858	681.12
" " " " " "	1859	26,544.06
" " " " " "	1860	3,197.53
By amount warrants,	1856	$ 5,211.48
" " "	1857	11,604.47
" " "	1858	4,502.93
" " "	1859	64,400.26
" " "	1860	41,234.14
Outstanding warrants,	1861	89,344.80

During 1861 this last aggregate was diminished to $87,390.84 (Auditor's Report of 1861). The large increase in the expenditure for 1859 is accounted for by the fact that the account of the legislature for 1858, the Leavenworth Constitutional Convention in 1859, the cost of the Board of Commissioners to investigate frauds in 1857 and 1858, and sundry other accounts of 1858 were all audited during the year 1859.

civil strife, by financial panic, and by threatened famine. In addition, the country was in the throes of a great national revolution and public confidence was shaken.[1]

The laws relating to assessment and taxation were revised under the state government in 1861, in 1866, in 1876, and in 1897. As the expenditures of the state increased and its resources became more varied, attempts were made to render the yield of the general property tax adequate and at the same time to subject all lines of industry to an equitable burden of taxation. Taxation in Kansas during these years reflects conditions which have prevailed and still do prevail in the average western state. Lack of variety in sources of revenue throws the burden on those portions of the state most affected by varying economic conditions, and upon the score of instability, least able to bear it. The history of taxation in Kansas is, then, practically the history of the working of the general property tax in a western state. In so far as a study in methods of commonwealth taxation is concerned, the data of 1898 possess as much value as those of 1862. In the gradual changes in the methods of assessing the general property tax and in recent attempts to adjust itself to new economic conditions, Kansas seems to be typical of the ordinary western state. There has been a gradual unconscious evolution.

---

[1] These facts are graphically described by a contemporary authority (Auditor's Report, January, 1862, Topeka, 1862):

"Inheriting the effects of a territorial government, practically destitute of both a treasury and a financial system, and which had signalized its dissolution by stamping upon its credit the ineffaceable stigma of repudiation, the new state was not only without funds for the payment of current expenses, but found itself excluded from those money markets which are the ordinary resources of needy governments. Notwithstanding the rebellion, which cause draws so largely from the ranks of our producing classes, necessitating a considerable decrease in the area of cultivated lands, and effectually putting an end to improvements generally; the drought of 1860—from the effects of which the state yet suffers in reputation to some extent—she has been steadily increasing in wealth, and her revenue has had an average yearly increase of 30 per cent."

The capitation tax was abandoned in 1863. The last levy of this occurred in the revenue act of 1862 where a tax of 50 cents on all male persons between 21 and 50 years of age was imposed. Throughout the early history of Kansas there was no fixed policy as to the method of selecting the assessing officer. It has been stated that the assessment was made under the territorial government by a county assessor appointed by the county tribunal, until 1858 when for two years a township assessor elected annually was tried, only to be superseded in 1860 by a county assessor elected annually. This continued until the legislature of 1869 abolished the office of county assesssor and made the township trustee also the township assessor.[1] Cities of the first and second class elected annually a city assessor. In 1868 the township trustee had been required to list and value the personal property of his township but the real estate was still listed by the county assessor.[2] This act also provided for the annual election of a city assessor to list and value personalty. In the laws of 1876 the assessor in cities of the first and second class was made an appointive officer of the mayor and council with a term of one year.[3] The special session of 1899 made the city assessor in cities of the second class an elective officer for a term of one year.[4] Thus it appears that the short term has characterized this office throughout the entire period.

It can hardly be said that the institution of a county assessor has had a fair trial in Kansas. As an appointive office, the term was too short and at the time when this method was used there was a total lack of system in all fiscal matters. Little less than anarchy prevailed throughout the entire time. An elective county assessor was only tried two years and a term of one year was entirely unsatisfactory.

---

[1] Laws of Kansas, 1869, p. 111.
[2] General Statutes, 1868, p. 1036.
[3] Session Laws, 1876, Art. VIII.
[4] Laws of Special Session, 1898-9, p. 23.

Early in the period of statehood the rapid development of the railroads of the state with their enormous landed wealth led to dissatisfaction with the method of assessing such property by local authorities. In 1869 was taken the first step towards independent assessment by the appointment of a board of appraisers and assessors for each railroad.[1] Where a railroad was located entirely within the limits of one county the county commissioners constituted the board. Where two or more counties were concerned, the board was made up of the county clerks of the counties along the line. The boards apportioned the assessed value of the road among the several counties in proportion to the mileage located in each. Appeal from the assessments of the board might be taken to the supreme court of the state. Finally, the state board of equalization had the same power over the assessments of these local boards as over ordinary property assessments, and where the supreme court ordered changes it became the duty of the state board to reapportion the railroad assessments among the counties. Two years later a new railroad assessment law was passed. A state board of railroad assessors was therein created, consisting of one member from each judicial district elected by the people for a term of two years. As there were then twelve districts the number of members of this board was twelve.[2] But as early as 1874 this law was repealed and railroad property was assessed again by the township assessors;[3] the assessment was, however, equalized by the state board of equalization. The present state board of railroad assessors, composed of the lieutenant governor, secretary of state, treasurer and attorney general, was created in 1876.[4] The same tendency has recently appeared in the assessment of telegraph and telephone companies. Until 1897 they were assessed by the same author-

[1] Laws of Kansas, 1869, p. 244.
[2] *Ibid.*, 1871, p. 329.
[3] *Ibid.*, 1874, p. 149.
[4] Session Laws of 1876, p. 53.

ities as other property, but at that time a special board of assessors was created for this purpose.

The attempt was made in 1872 to permit the taxpayer listing his personal property to deduct his debts from his total credits.[1] This law only remained in force four years. It was probably a conscientious attempt to tax only what was actually owned. But quite a different spirit led in the next year (1873), to the exemption of mortgages and other securities from taxation. The title of the acts asserts its purpose to be: "to promote the improvement of real estate by exempting mortgages and other securities from taxation."[2] The repeal of the act of the legislature at its next session is probably sufficient commentary on the attitude of the people of Kansas upon the exemption of mortgages.

The history of the direct state tax for public schools is brief. In 1861 the original act permitting the legislature to levy an annual tax of one mill upon the dollar for the benefit of the common schools was passed.[3] This tax was collected in the same manner as other state taxes, and continued to be levied until the repeal of the law in 1879.[4]

The first step in the taxation of insurance companies occurred as early as 1863, and was indeed the beginning of the slow process of differentiation in state taxation. The act of 1863,[5] however, was not an attempt to derive revenue but rather to protect the citizens of Kansas against wild-cat insurance companies and to regulate those companies organized under Kansas laws. This act permitted the secretary of state to collect the following fees: $5.00 for filing the initial record and the same amount for the annual statement, and $2.00 for every certificate of agency. The county clerk was permitted to collect 50 cents for every paper filed. This only affected those companies organized under

[1] Laws of Kansas, 1872, p. 104.
[2] *Ibid.*, 1873, "Act exempting mortgages."
[3] *Ibid.*, 1861, p. 27.
[4] *Ibid.*, 1879, p. 270. It yielded in 1878 to the common school fund $144,930.27. (Documents of Kansas, 1879, p. 126.)
[5] Laws of Kansas, 1863, p. 59.

state laws. Since then changes have been made, as the imposition of a tax for the benefit of fire-departments, additional license fees, reciprocal fees, and a rate upon premiums of foreign companies. But it was not until the special session of 1898-9 [1] that a definite state charge beyond that required for the support of the insurance department became the deliberate policy of the legislature. The examination of this law is deferred to the study of the corporation tax as it exists in Kansas.

From this brief historical survey of tax legislation in Kansas it will appear that while some progress towards more varied sources of revenue has been made, yet the movement has been slow. There has been a gradual differentiation in assessment. Railroad companies first secured the privileges of separate assessment and recently telegraph and telephone companies have followed. The direct state tax upon insurance companies will probably be the opening wedge for a wider corporation tax. In the practical working of the general property tax it is hard to see any definite advance. In the method of choosing assessors the only conclusion possible is that the earlier methods have not been improved. One cannot help but believe that a state board of equalization composed of representatives chosen from judicial districts was better than a board made up of state officials with their hands already full of routine executive business. However, the present number of judicial districts (35) would make such a board unwieldy. If there is to be a state board, it would probably be well to substitute Congressional districts as the basis of representation. After all, considerable experience has been gained by the state, and a careful study of past measures and actual experiences should precede any attempt to formulate further improvement in tax methods.

There is probably no factor in the development of Kansas more interesting from a fiscal standpoint than the dispo-

[1] Laws of Special Session, 1899, p. 72.

sition of public lands and the aid which has been given to railroads. By acts of Congress the state received for public purposes 1,459,840 acres of land. Of this amount it is estimated 800,292 acres came from the sixteenth and thirty-sixth sections given to the common schools of the state; 46,080 acres from the seventy-two sections given to the state University; 6400 acres from the ten sections devoted to public buildings; 46,080 acres from the six sections adjacent to twelve salt springs. The act of Congress of September 4, 1841, gave to the state 500,000 acres and the act of February 26, 1859, 60,988 acres.[1] In addition to these grants the state was to receive five per cent. of the proceeds accruing from the sale of public lands. An act of the state legislature in 1868 directed that this amount be paid into the state treasury to the credit of the school fund.[2] I have been unable to ascertain the total amount of this fund, but the claim of the state, granted by Congress, estimated it for the years from 1851 to 1877 as $190,566.08. In striking contrast with what has actually been done in the way of state aid to the common schools by public land grants is the intent of the constitution drawn in 1857. Here it was proposed to set aside for the support of the common schools sections 8, 16, 24 and 36. In addition to this there was to be assigned for the same purpose three-fifths of the five per cent. of the proceeds from the sale of public lands.

Aid to railroads in Kansas has been given by the federal and state government in the shape of land grants and by the various counties, townships and cities in the form of bond subscriptions or outright bonuses. About 80 per cent. of all county, township and city bonds have been issued in aid of railroad construction.[3] To such an extent has this practice been carried that the legislature of 1887 enacted a law reducing the limit of such aid from four thousand to two thousand dollars per mile. But the craze was at its

[1] State Documents, Jan. 14, 1862; Annals of Kansas, p. 266.
[2] Statutes of Kansas, 1868, p. 972.
[3] Governor's Message, 1891, in Documents of Kansas, 1889-90, p. 9.

height and this legislation does not seem to have sufficed. The governor in his message to the legislature in 1889 urged stringent limitations and restrictions upon this form of aid, indeed going so far as to ask that all authority to issue bonds be revoked, except in the case of counties having no railway lines within their limits.[1] While this local aid to railroads undoubtedly hastened the growth of the state, it also resulted in feverish development, over-speculation and final collapse in many places. Many railroads were built where they were not demanded, and it is the common conviction of residents of Kansas that all the roads that were actually needed would have been built without this aid.[2]

To a considerably less extent the state has been a party to the policy of public aid to railroad systems. The question of the relation of the state to railroad construction was brought before the people during the territorial period. One governor recommended a liberal grant of state lands and a reservation of seven per cent. of their gross annual

---

[1] Governor's Message, 1889, p. 10, Documents of Kansas, 1887-88.

[2] The federal government was in the midst of its railroad aid policy when Kansas was admitted to the union, and a statement of the federal grants to Kansas railroads is here appended:

Date of Law.	Name of Road.	Quantity granted in acres.
Mch. 3, 1863.	Leavenworth, Lawrence & Galveston.....	800,000
July 1, 1864.	Atchison, Topeka & Santa Fe.....	3,000,000
July 1, 1864.	Union Pacific—So. Branch	500,000
July 23, 1866.	St. Joseph & Denver City.....	1,700,000
July 25, 1866.	Kansas & Neosho Valley, now known as Missouri River, Ft. Scott & Gulf R. R.	2,350,000
July 26, 1866.	South. Branch Union Pacific, now Missouri, Kansas & Texas R. R.....	1,520,000
July 1, 1862, July 2, 1864.	Central Branch—Union Pacific.....	245,166
July 1, 1862, July 2, 1864.	Kansas Pacific	6,000,000

See Annals of Kansas, p. 628.

receipts. This was suggested by the Illinois method.[1] Another advocated a great state railroad to run to the Gulf.[2] But as a matter of fact the state government has never given more than the 500,000 acres granted by the federal government in the act of 1841.[3] At one time the state senate had under consideration a bill which proposed a five-million state railroad debt,[4] but fortunately this measure was defeated.

State and Local Taxation

State and local sources of revenue are so interwoven in Kansas that it is difficult to consider either apart from the other, while the results of such a consideration would in any event seem incomplete. There is not that variety found in many of the older states, making possible the use of distinct taxes for state and for local purposes. For the most part the state tax is collected through the same channels and has the same origin as the local tax. The proportion required for state purposes is comparatively light,[5]

[1] "Now if Kansas, like the state of Illinois, in granting hereafter these lands to companies to build these (rail) roads should preserve, at least 7 per cent. of their gross annual receipts, it is quite certain that, so soon as these roads are constructed, such will be the large payments into the treasury of our state, that there will be no necessity to impose in Kansas any state tax whatever, especially if the constitution should contain wise provision against the creation of state debts." Gov. Walker's Inaugural, May 27, 1857, in Kansas State Hist. Collections, Vol. V, p. 330.

[2] Gov. Geary's Message, January 12, 1857, in Annals of Kansas, p. 113.

[3] Annals of Kansas, p. 437.

[4] Annals of Kansas, p. 458; State Senate Documents, Feb. 23, 1867.

[5] Statement showing proportion of state and local taxes levied in 1897 (Report of Auditor, 1898, p. 226):

State tax	$1,358,417.64
County tax	3,784,088.12
City tax	1,948,564.53
Township tax	1,493,969.16
School district tax	4,008,411.33
Total levy	$12,593,540.78
The amount levied on railroad property in 1897	2,119,875.38

forming about one-ninth part of the whole amount of taxes collected.[1] In the following pages attention will be centered upon state taxation. Consideration will be given to other forms of state revenue and to local finances to the degree made necessary by clearness of statement and comprehensiveness of grasp.

General Property Tax

This tax, as has already been noted, has been almost the sole source of the state's compulsory revenue since the organization of Kansas in 1854. The method of assessment has been modified to suit varying conditions; but the changes have been in detail and not in principle. The auditor's report for the first year of statehood, 1861, estimated the yield of the general property tax to be about 94 per cent. of the total proceeds from taxation. A comparison of the proportion in the years that have elapsed since 1861, shows that this ratio has changed little. Thus during the fiscal year of 1898 $1,413,695.08 was collected from the general property tax, while the total income from taxation was $1,505,646.87. That is, the general property tax yielded 93 per cent. of the whole revenue from taxation.

Levy. The amount and the rate of the tax for state purposes are determined by the state legislature. At each regular session this body passes a revenue act for the two succeeding years. By this act such a rate, expressed in number of mills on the dollar, as will yield the amount appropriated for the various state needs, is fixed as the levy for each of the two following years. As the act is passed before the assessment for the current year is completed, the rate is based on the assessment of the preceding year.[2] The

[1] Cf. estimate of Gov. Humphrey in Message of January 16, 1889 (Documents of Kansas, 1887-8, p. 21).

[2] It would be better for the legislature to merely fix the aggregate amount to be raised by taxation for state purposes, leaving the rate to be determined by the state board of equalization. The rate could then be based upon the assessment of the current year. Cf. Governor's Message, January 9, 1895, p. 7, in Documents of Kansas, 1893-94; also Treasurer's Report of same date.

state levy has remained about the same for a number of years, failing indeed to vary with the change in property valuation, or with the increase in state expenditures.

Fund System. The tax rate for each year is made up of several levies. The fund system is in force; but the number of funds has been gradually reduced until now there are only two in receipt of income from taxation. These are the general revenue fund and the interest fund. Prior to 1897 there was a special levy at each biennial session and a corresponding fund known as the "Current University Fund" to provide for the expenses of the State University. Now appropriations for the University are taken out of the general revenue fund. There is still a statehouse fund, and also a sinking fund. The last levy, however, for the statehouse fund was made in 1896 and the only receipts now accruing thereto are taxes in arrears. A separate levy for the sinking fund has not been made for several years, and only unpaid taxes upon past levies now accrue thereto.[1]

The tax levies for the three fiscal years ending June 30, 1900, have been as follows:[2]

1895 and 1896: general revenue fund, $3\frac{5}{10}$ mills; inter-

[1] The legislature of 1899 made a levy of ¼ mill on the dollar for the completion of the state house. This is for the years 1899 and 1900, and the fund is only temporary. See Session Laws, 1899, p. 433.

[2] Aside from the regular funds for which taxes are levied, there are several special funds still in existence kept open because of back taxes still accruing to them or because the legislature has not provided for their transfer. In some cases these funds have sources of income other than general property taxation, thus the insurance fund arises from a direct tax upon insurance companies. In the Treasurer's Report for June 30, 1898, p. 12, there are a total of twenty-six funds given as follows: General Revenue, State-house, Sinking, Interest, Current University, Militia, Veterinary, Permanent school, Annual school, University permanent, University interest, Normal permanent, Normal interest, Agricultural college permanent, Agricultural college interest, Insurance, Library, Stormont library permanent, Stormont library interest, Seed-grain account, United States aid to soldiers' home, United States endowment agricultural college, State grain inspector, fiscal agency interest account, Court Stenographer's fees, and Municipal interest.

est fund, $\frac{2}{10}$ mill; current University, $\frac{3}{10}$ mill; statehouse, $\frac{25}{100}$ mill; total state levy, $4\frac{25}{100}$ mills.

1897 and 1898: general revenue fund, 4 mills; interest fund, $\frac{1}{10}$ mill; total state levy, $4\frac{1}{10}$ mills.

1899 and 1900: general revenue fund, 5 mills; interest fund, ¼ mill; statehouse, ¼ mill; total, $5\frac{5}{10}$ mills.

The aggregate state levy for a term of years is shown in the following table:

1861.....	4 mills.	1881.....	5 mills.
1862.....	8 "	1882.....	4½ "
1863.....	7 "	1883.....	$4\frac{5}{10}$ "
1864.....	7 "	1884.....	4½ "
1865.....	7 "	1885.....	$4\frac{3}{20}$ "
1866.....	6 "	1886.....	$4\frac{1}{10}$ "
1867.....	6 "	1887.....	$4\frac{1}{10}$ "
1868.....	6½ "	1888.....	$4\frac{1}{10}$ "
1869.....10 "		1889.....	$4\frac{2}{10}$ "
1870.....	8¾ "	1890.....	4¼ "
1871.....	6 "	1891.....	$3\frac{19}{20}$ "
1872.....	8½ "	1892.....	$3\frac{9}{10}$ "
1873.....	6 "	1893.....	$3\frac{8}{10}$ "
1874.....	6 "	1894.....	$3\frac{9}{10}$ "
1875.....	6 "	1895.....	4¼ "
1876.....	5½ "	1896.....	4¼ "
1877.....	5½ "	1897.....	$4\frac{1}{10}$ "
1878.....	5½ "	1898.....	$4\frac{1}{10}$ "
1879.....	5½ "	1899.....	5½ "
1880.....	5½ "	1900.....	5½ "

Taxable Property and Exemptions. Unless expressly exempted all property, real and personal, is subject to taxation. Real property includes not only land, but all buildings, fixtures, improvements, mines, quarries, mineral springs and wells. Personal property includes " every tangible thing which is the subject of ownership, not forming part or parcel of real property; also all tax-sale certificates, judgments, notes, bonds, and mortgages, and all evidences of debt secured by lien on real estate; also the capital stock, undivided profits, and all other assets of every company, incorporated or unincorporated and every share or interest in such stock, profit, or assets—also all property owned, leased, used, occupied or employed by any railway or tele-

graph company or corporation in this state situated on the right-of-way of any railway." [1]

The statutes exempt from taxation, all property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent, and charitable purposes; personal property to the amount of two hundred dollars for each family; the wearing apparel of every person; all public libraries; and family libraries and school books of every person and family not exceeding in value in any one case, fifty dollars.[2]

Assessment. The township trustee is the assessor for his township. In cities of the first and third classes, an officer called the assessor is appointed annually by the mayor with the approval of the council. Cities of the second class elect at the annual municipal election a city assessor. Railroad property is assessed by a special state board, composed of the lieutenant governor, secretary of state, treasurer, auditor and the attorney general. For the assessment of property of telegraph and telephone companies, the same members comprise a board of appraisers and assessors.

It is the duty of every person of age and sound mind to list for the assessor, when called upon, all personal property of which he is the owner or user. The property of every company or corporation must be listed by some person designated by it. Such property is listed at the place where it is situated on the first day of March. The assessor may require the person listing personal property to verify his return by oath. Money and credits, not belonging to a business, are assessed at the place where the owner resides on the first of March. Where personal property is in the possession of the mortgagor on the first day of March, it is subject to assessment and taxation as the property of the mortgagor.[3]

At the time the return is made to the assessor, that officer

[1] General Statutes of Kansas, 1897, Vol. II, p. 874.
[2] General Statutes of Kansas, 1897, Vol. II, p. 875.
[3] See Field *vs.* Russel, 38 Kansas, 720.

may make such changes in the valuation of the property as seem to him just. In order better to secure equality in valuation, it is the duty of the assessors to meet in their respective county-seats on the first Monday in March, and there agree upon an equal basis for valuation. The statutes distinctly declare that such property shall be valued at the usual selling price in money at that time and place. The listing of personal property is done between the first day of March and the first day of May of each year. If the assessor discovers that any property subject to taxation has escaped, he is required to list and value it at twice its real value. However, there are very few assessors willing to make an extra effort to discover concealed property. In case of a refusal to deliver a statement of property, or to make oath to the truth of the statement, the assessor has power to take such steps as may be necessary to ascertain the valuation of all the taxable property. Whatever costs accrue from the employment of witnesses and constables or any other necessary procedure, are collected as a part of the taxes. Thus the costs in obtaining an assessment of the property become the penalty for refusal to list it. In addition it is the duty of the county clerk to add 50 per cent. to the valuation of all property which the owner has refused to list. I have never known of a case in Kansas where this power has been exercised. It is not refusal to list personal property, but concealment thereof that causes the evil.

Banking, loan and insurance companies are assessed on the market value of their capital stock, and stockholders are individually liable for taxes which may remain unpaid. The capital stock of banks is reached by assessing the shares of the individual stockholders, though the tax is collected through the corporation.[1] In general, it may be

[1] In several cases the courts have decided that a bank may pay the tax assessed upon its stockholders, and that an unpaid tax constitutes a lien on such shares. If, however, the tax levied upon the different stockholders be not paid by the bank, the property of the individual stockholders is liable for it. (See Revised Statutes, 1897, p. 387, note.)

said that all corporate shares are taxed in this manner. The assessed value, based on the capital stock, covers in practice everything, buildings, fixtures, money and credit papers.

The assessment of real property is made every second year. Here again the statutes provide that all real property shall be assessed at its true value. The assessor determines the value of all real estate and improvements by actual examination, and returns this, together with a full description of the property, to the county clerk. In actual practice, much reliance is put upon the land records in the register's office and upon previous assessment returns, and little effort is made to secure an entirely new valuation. Especially does this hold true in the cities, where revision is most needed.

The aggregate valuation of various classes of property for a term of years is shown in the following table:[1]

Year.	Land.	Personal Property.	Town lots.	Railroads.
1880	$87,510,028	$31,921,835	$20,922,021	$20,547,702
1881	91,207,146	34,437,195	22,493,321	22,671,911
1882	96,741,025	38,087,359	26,203,733	25,086,156
1883	99,899,559	48,030,492	27,739,202	27,290,214
1884	117,325,342	56,890,513	34,836,990	28,460,905
1885	122,871,239	56,502,333	38,420,301	30,367,820
1886	142,668,463	55,491,779	46,967,259	32,453,776
1887	152,200,666	60,796,746	56,646,873	41,222,605
1888	168,558,547	56,441,763	73,862,136	52,829,664
1889	173,801,010	53,187,371	76,330,671	57,494,849
1890	168,285,199	48,750,913	72,814,873	57,866,232
1891	170,160,308	47,401,227	74,303,916	50,865,825
1892	171,167,129	46,315,463	65,317,432	51,404,544
1893	173,077,920	47,227,073	65,756,543	61,731,035
1894	173,075,265	40,854,934	61,835,141	59,764,683
1895	173,296,813	35,031,849	62,076,828	59,503,654
1896	166,623,312	36,156,224	59,043,785	59,333,155
1897	167,766,793	38,242,266	59,207,508	59,445,669
1898	163,296,148	45,371,367	56,606,286	[2] 58,371,663

[1] Compiled from Reports of State Auditors, 1880-1898.

[2] This includes the valuation of telegraph and telephone companies. Before 1898 the valuation of such companies was included in the lists of real and personal property.

County Equalization. To secure an equal apportionment of the tax among the different portions of the county, the county commissioners are constituted a board to hear complaints and petitions from dissatisfied property owners. The board meets on the first Monday of June to equalize the returns of the assessors. At this time all parties feeling themselves aggrieved by the assessment can appear and have errors corrected. Individuals make free use of this opportunity to threaten and persuade the board to modify valuations. Often the privilege is a means of righting a wrong; often it is a means of shirking the payment of a just share of taxation.

State Equalization. The State Board of Equalization, consisting of the auditor, treasurer, and secretary of state, meets annually at Topeka on the second Wednesday in July. It examines the abstracts of property assessed for taxation in the various counties, and equalizes the county assessments by adding to or deducting from the assessed valuation. But in these changes the board cannot reduce the aggregate amount. It is essential that the total valuation be sufficient to yield, at the rate levied by the legislature, the amount needed for state purposes. The final assessments of the Board of Equalization are reported by the auditor to the county clerks, who determine the rate per cent. necessary to raise their respective portions of the state tax. The practice prevails among the counties of using the valuation fixed by the state board for state taxation only and of employing for local purposes the valuation fixed by the County Board.[1]

Assessment of Railroad Companies. The property of railroad corporations is assessed annually by a board consisting of the lieutenant governor, the secretary of state, the treasurer, the auditor and the attorney general. It is the duty of this board to appraise and assess at its actual value

[1] The Attorney General in his report for 1883-4 states that such is the practice. Documents of Kansas, Topeka, 1883-4, p. 76.

the track, road-bed, right-of-way, water and fuel stations, buildings, land, machinery, rolling stock, telegraph lines and instruments, material and supplies, moneys and credits, together with all other property used in the operation of the railroad. The board makes up its reports from the sworn statements of railroad officials and from personal examination and inspection. In case of failure on the part of the railroad to make the required statement to the state auditor, a penalty of not less than $1000 for each offense is incurred. In fixing the valuation of roads situated partly outside of the state, the valuation of that part within the state is determined by the ratio to the total valuation which the mileage in the state bears to the total mileage. It is customary to give the railroads an opportunity to appear before the board, and skilled representatives are sent to endeavor to secure a reduction of assessments.[1]

Through the auditor the board makes return of valuations to the county clerks in proportion to mileage in each county. The county clerks in turn place the assessments upon the county tax-rolls and thus the property becomes subject to the same rate of levy as other property for state, county, township or city and school district taxation.

Telegraph and Telephone Companies. In like manner the board of appraisers and assessors makes returns to the county clerks of the property of telegraph and telephone companies. The penalty for a refusal of these companies to file the proper statement with the auditor is $500, and an additional sum of $100 for each day's omission after

[1] It is a noteworthy commentary upon the relative merits of assessment by local authorities and by a state board constituted as the Kansas board, to find in the proceedings of the board frequent requests that prices of land or property be assessed by the state board rather than by the local assessors (Proceedings for May 27, 1897; April 26, 1898). It is not possible to present any conclusive opinion, but the little evidence at hand convinces me that the railroads very much prefer assessment by a state board; that the valuation is on an average less than when made by the local authorities, and that on the other hand a greater degree of uniformity is obtained by the present method.

March 20. In determining the assessment of telegraph and telephone companies' property, the auditor deducts from the total valuation the value of any real estate owned by the company, and also of all personal property located in the central or exchange offices. Such deducted property is assessed by the local assessor as real and personal property.[1]

Collection. The collection of the property tax is vested in the county treasurer. Taxes are payable on and after the first day of November. The entire amount may be paid on or before December 20, or half may be paid then, and the remainder on or before June 20. In case all is paid at the first date a rebate of five per cent. is allowed on that portion due in June. If any portion is not paid when due, it may then be collected according to law and a penalty of five per cent. may be added. If half the personal tax is not paid by December 21, the whole then becomes due and the sheriff may be directed to sell sufficient personal property to cover the tax. In the same way the second half is collected when due.

If the taxes on real estate remain unpaid by June 20 of each year, the land may be sold at public auction and the amount due be paid into the county treasury. Land thus sold may be redeemed at any time within three years upon the payment of the amount for which it was sold, together with all the subsequent taxes, and interest on all at fifteen per cent. The taxes are paid over as collected to the state, city, township, and school treasurers. The state taxes are,

[1] Prior to 1898 all property of the telegraph and telephone companies was assessed by the local authorities. As the board for 1898 only held three daily sessions, it is hardly probable that anything more than a general estimate could have been made. The telegraph companies were assessed for the first wire, including poles, sixty-five dollars per mile; for each additional wire, twelve dollars per mile; tools, material, and office furniture, one dollar per mile on pole mileage. (Proceedings of Board of Telegraph & Telephone Appraisers and Assessors for May 20, 1898, in Auditor's Report, p. 250.) Telephone companies were usually assessed according to the returns of the various reporting agents (*ibid.*, June 13, 1898, p. 251).

however, paid into the state treasury, semi-annually, in July and January.

Criticism. Undoubtedly the worst feature in the practical operation of the general property tax in Kansas, is inequality of valuation. Were the true value of property taken as the basis for assessments, much of the evil of the present system would be obviated.[1]

The feature of the code responsible in large part for the mischief is the section reading:[2] "The several townships and city assessors shall meet at the county seat in their respective counties on the first Monday in March in each year, and then agree upon an equal basis of valuation of such property as they may be called upon to assess. It will be the duty of the county clerk of each county to notify such township or city assessors at least ten days previously to the date of such meetings." At this meeting the assessors determine the taxable basis; it rarely coincides, however,

[1] Equitable valuation has always been the intent of the tax laws, as may be gathered from the following extracts from the General Statutes of 1879 (Chapter 158, Sects. 44, 74 and 76):

"Personal property shall be valued at the usual selling price in money at the place where the same may be held; but if there be no selling price known to the person required to fix the value thereon, it shall be valued at such price as is believed could be obtained therefor in money at such time and place. Current money, whether in possession or on deposit, subject to be withdrawn on demand or within one year from date of deposit, shall be entered in the statement at the full amount thereof. Depreciated bank notes shall be entered in the statements at their current value."

"The assessor shall, from actual view and from the best sources of information within his reach, determine as nearly as practicable the true value of all taxable real property in money within his township or city, as the case may be."

"Each parcel of real property shall be valued at its true value in money, the value thereof to be determined by the assessor from actual view and inspection of the property; but the price at which such real property would sell at auction or forced sale shall not be taken as the criterion of such true value. All the real property belonging to religious, literary, scientific, benevolent or charitable institutions or societies, as well as all school or university lands leased or held for profit, shall be valued at such price as the assessor believes such estates would command in money."

[2] Section 42, chapter 158, of General Statutes of 1879.

with the true value of property.[1] It is not an uncommon practice to assess personal property at about one-third of its actual value; but the variations in the rate of assessments as compared with the true valuation are great. In 1897 the assessors of Atchison County decided to rate personal property at 25 per cent. of its true value; Chase County, at 33⅓ per cent.; Elk County, at 40 per cent.; Rice County, at 30 per cent.; Franklin County, at 50 per cent.; Phillips County, at 60 per cent.; Staunton County, at 75 per cent.; Decatur County, at 100 per cent. So far as I can find only three counties followed the plain instruction of the law and assessed property at 100 per cent. of its actual value.[2] The conditions in regard to the assessment of real property were even worse. The rate for real property in Brown County was fixed at 20 per cent.; in Dickinson, at 25 per cent.; in Sedgwick, at 30 per cent.; in Shawnee, at 33⅓ per cent.; in Osborne, at 40 per cent.; in Franklin, at 50 per cent.; in Graham, at 80 per cent.; in Hodgeman, at 100 per cent.; in Gove, at 200 per cent. of the actual value. Only eight counties report 100 per cent. of the actual value as the rate of assessment.

The returns for 1899 which are coming in while these pages are being written, show that the assessors continue flagrantly to violate the law and to place fictitious values on personalty. Horses are valued in Jefferson County as low as $6.97; in Grant, at $5.45; Stevens, $5.30; Marshall, $7.51; and Doniphan, at $20. Sheep are assessed at 20 cents a head in Ellsworth; mules in Logan County, at $4.27 each. In Lyon County, which is a large cattle district,

[1] "The assessors invariably interpret the last-quoted provision (Sect. 58, ch. 107, Laws of 1879) as authorizing them to fix any basis of valuation they may deem proper, and, as a rule, agree on a basis of one-third or one-fourth of the real cash value. But in actual work, even this basis is frequently disregarded by assessors, and numerous instances can be cited, in nearly every county, where property is assessed at not to exceed ten per cent. of its real value." Governor's Message, January 9, 1889, in Documents of Kansas, 1887-8, p. 18.

[2] Report of Kansas Bureau of Labor (Topeka, 1898), p. 14.

cattle are valued at $10.67; while in Jefferson County with a better grade of cattle the rate is only $6.40. Nor is the farmer alone affected by this tendency toward under-valuation. The same reports show that gold watches are valued at $3.35 in Stafford; in Stevens, at $4.46; in Comanche, at $4.42. Pianos are even held lower: Jefferson, $16.66 each; Stafford, $17.04; Ellsworth, $19.66; Grant, $20.[1]

The practice of under-valuation "pervades every tax department in the state."[2] It is due most largely to the desire of counties and townships to shift the burden of taxation.[3] Together with this strong temptation, always present, there is another factor tending in the same direction. Low assessments and a high tax rate mean less friction between the assessor and assessed, than a low rate and a high assessed valuation. The statement that the owner sees and contests before the board of equalization is the assessed value. If this is only a fraction of the real value of the property, he is slower to complain. There is more or less uncertainty in

[1] An article in the *Kansas City Journal* of June 29, 1899, contains a typical list of these valuations.

[2] "I suppose the counties of the state are primarily responsible for the present system of low valuations. A desire to lessen the proportion of certain counties in state tax, no doubt, caused the first departure from the law, and being, we may say, contagious, the pernicious system has grown until it now thoroughly pervades every tax department in the state. Having become general in its application, in the various counties of the state, it necessarily controlled the action of the assessors of the railroad property. Even the legislatures of the past became parties to it. The levies provided by law for last year, if applied to the actual value of all property in the state, would raise—no person can say how much—certainly three millions of dollars; whereas, with the present valuation, but about one million is raised. It would, therefore, seem as if the reform should be commenced with the legislature." Report of Treasurer, p. 94, in Documents of Kansas, 1885-86.

[3] "The causes which have operated to bring about these inequalities in assessment appear to be, first, a desire on the part of township assessors, and county boards, to diminish as much as possible, the proportion of their respective county and state tax; and, second, to avoid the restriction upon tax levies provided in Sec. 220, ch. 25, Laws 1877." Message of Governor, 1885, in Documents of Kansas, 1883-4, p. 9.

the mind of the average taxpayer as to the injustice of a high tax rate, while there is none as to the iniquity of a high assessment. In other words, the assessors are able to hide behind the glamor of under-valuations, whereas a true valuation gives the owner two criteria for knowing whether he is justly assessed, the value for which he can sell his property and the amount at which his neighbor is assessed.

The practice of under-valuation has been repeatedly condemned by those best acquainted with local conditions. In his message to the state legislature in 1883, Governor Martin said: "Our laws on the subject of assessment and equalization of property values for taxation need thorough revision. Assessors not only pay no attention to the laws, but, by formal agreement, assess property at from 20 to 50 per cent. of its true value, and, as a consequence, the state board of railroad assessors adopts the same rule in appraising the value of railroad property. If it were possible under such a system to obtain a uniform assessment of property values throughout the state, there could not, perhaps, be serious ground for complaint, but the valuation of property in the several counties, and often in different sections of the same county, are grossly unequal, ranging from 25 to 60 per cent. of actual value."[1] A state treasurer who had given the subject careful study and who just prior to his death was preparing for publication a report on existing methods of assessment, stated: "That a thorough reform in the vicious system of assessment which now obtains in Kansas is very necessary must be evident to every person who has given the matter thought."[2] The majority of state officers speaking in their official capacity as members of the state board of railroad assessors made the following plea in 1889:

"This Board respectfully asks that the basis of taxation on all property in Kansas shall be its actual value, to the end that every incentive shall be given to honestly acquire

[1] Message of Gov. Martin, in Documents of Kansas, 1883-4, p. 8.
[2] Treasurer Howe's Report, in Documents of Kansas, 1885-6, pp. 92-3.

the blessings and equally share the burdens of the commonwealth."[1] Finally the Supreme Court in a recent decision renews its strong condemnation of inequitable assessments.[2]

In the case of real estate there is a marked tendency to assess small tracts of land relatively higher than large or valuable estates. For example, in Brown County, land with a selling value of $1000 and with an average value of $10 per acre, is given an assessed valuation of $665, and pays a tax of $25.23; while land with actual selling value of $11,000 and with an average value of $50 per acre, is given an assessed valuation of $2045 and pays a tax of $75.55. That is, the owner of a small tract pays one-third as much tax as the owner of a tract worth eleven times as much. In Shawnee County, land with an actual selling value of $3770.50 and an average acre value of $24.37, is assessed $1344.75, and pays a tax of $35.24; while a tract with an actual selling value of $8500 and an average acre value of $34.10, is assessed at $2073.75, and pays a tax of $62.14. Here the smaller land owner pays more than half as much tax as the other, with much less than half as much property. In Franklin County a small piece worth in the market $400 at the rate of $30.76 per acre is assessed at $260 and pays a tax of $8.55; and in the same county a tract worth $3481.25 at the rate of $25.00 per acre, is assessed at $1091.25, and pays $27.54 in taxes. The man with almost nine times as

[1] Report of Railroad Assessors for 1891, in Documents of Kansas, 1889-90, p. 21.

[2] "The constitution ordains that the legislature shall provide for a uniform and equal rate of assessment and taxation. To compel uniformity and equality of assessment and taxation, the statute provides that all property shall be assessed at its true value. The habitual disregard of the statute relating to the valuation of property for taxation by local assessors has been continuously condemned in the decisions of this court from Adams *vs.* Bernan to Chaliss *vs.* Riggs. The injustice of the system of taxation growing out of the constant and continued disregard of the proper valuation of property, becomes more and more apparent. Here there has been a gross discrimination in the taxation of railroad property. The law has not been observed. The taxes complained of are not equal and uniform." Railroad Company *vs.* Commissioners of Atchison County, 54 Kansas, 787.

much property pays only three times as much tax. Nor are these isolated cases. They are taken at random. Many more striking instances might have been chosen, but the intention has been to show average, not exceptional, conditions.[1]

In the first case cited, if the larger holder paid $75.55 tax, the smaller should have paid about $7.00 tax instead of $25.23. But $7.00 means a small tax-bill and the assessor is inclined to raise the amount. On the other hand, if the smaller holder paid $25.23, the larger should have paid about $277.53; but $277.53 seems to be an impossible amount and the assessor is inclined to lessen the burden. The anomalous results following from the practice of undervaluation are again shown in the following table, compiled from the Thirteenth Annual Report of the Kansas Bureau of Labor and Industrial Statistics:

Per Cent. of Assessed Valuation to Real Valuation.

County.	Land.					Lots.				
	Less than $250.	$500 to $1,000	$2,500 to $5,000	$5,000 to $10,000	$10,000 to $25,000	Less than $250	$250 to $500	$500 to $1,000	$1,000 to $2,500	$2,500 to $5,000
Atchison	.....	31.3	16.5	13.1	....	44.9	35.8	25.1	29.3	32.5
Barber	159.1	57.1	....	....	....	102.5	16.5	8.6	21.8	....
Bourbon	173.1	45.4	30.1	19.5	14.3	59.9	44.2	38.7	35.7	50.0
Brown	88.7	66.6	17.2	17.0	18.5	41.4	30.5	19.1	19.1	23.0
Butler	312.0	30.4	20.3	13.7	....	52.7	15.1	53.8	32.6	....
Chautauqua	180.0	39.8	21.8	....	....	87.5	39.6	25.3	16.8	6.1
Comanche	153.0	31.2	20.7	....	....	106.0	56.0	....	....	....
Doniphan	33.0	26.0	23.6	16.6	18.0	46.2	29.8	26.0	24.9	....
Douglas	93.1	26.4	21.4	23.2	23.2	44.0	39.5	32.6	23.0	27.3
Ellsworth	373.3	55.9	56.5	....	....	100.9	51.4	50.6	1.5	....
Ford	165.6	34.8	28.0	10.3	....	176.6	67.5	38.2	....	....
Franklin	65.0	39.4	31.2	....	....	39.7	35.6	24.8	27.8	32.5
Hamilton	142.9	34.5	11.3	25.4	....	74.6	90.7	60.0	....	....
Leavenworth	36.1	36.6	22.7	19.1	10.6	52.4	40.9	30.6	42.4	47.8
Mitchell	150.0	47.6	35.7	....	....	60.0	25.0	51.7	38.0	....
Sherman	121.2	22.1	....	....	....	106.6	28.1	34.6	....	....
Shawnee	89.5	55.3	35.6	24.3	....	81.2	63.2	53.9	42.2	37.8
Wabaunsee	200.8	27.1	19.7	....	....	35.6	22.5	12.6	....	19.5

[1] These illustrations are taken from the Thirteenth Annual Report of the Kansas Bureau of Labor and Industrial Statistics. The figures given are authentic, *i. e.* in each instance an actual sale has taken place during the year at the selling prices given.

Here the actual value of agricultural land and building lots in eighteen counties is tabulated. The real value of each group determined by an actual sale and the total assessed value as shown by the assessors' returns have permitted a computation of the percentage of assessed value of each group to its real value. The same tendency to under assessment of large holdings appears again. In several counties, notably, Jackson, Smith, Wyandotte, and Russell, this is not so apparent, but I am convinced from personal examination of actual sale values as compared with assessed values extending over several years and including the returns from fourteen townships, that unusually high assessments in special cases, irregularity everywhere, and a general tendency toward over-assessment of the small, cheap tracts are prevailing conditions.

Especially is it certain that almost worthless lots in small towns are assessed proportionately higher than valuable lots in the cities. The judgment of the assessor is usually the cause of the evil. One township was examined where excessive irregularities were shown. In such cases very much more severe criticism could be made; but as these abuses are solely the fault of the electors in choosing inefficient officials and are probably not very common cases, further comment may be reserved for a criticism of the method of selecting assessors. Sometimes it is sympathy that changes the assessor's report, sometimes it is fear. In either case there is little uniformity in land valuations in the same locality.[1] What has been said of inequality in

[1] There is an almost universal expression of dissatisfaction with our present mode of assessing property for taxation. That it is unequal, and consequently unjust, no one familiar with it would for a moment deny.—The only safe rule to follow is to assess all property at its actual cash value, without regard to its character or the use to which it is applied. The inequality arises, not from the fact that the property of the state is assessed too low, but because it is assessed unequally. When one piece of property is assessed at 10 per cent. of what it is really worth and another piece is assessed at its full value, and other property is not assessed at all, great injustice is done to some of the taxpayers; and yet that condition of

real estate valuation holds true of personal property. Indeed, the conditions are even more unsatisfactory. The accepted rates of assessment for certain classes of personalty in 1898 are shown in the following table:

County.	Gold Watches.	Wagons.	Pianos.	Wheat.	Corn.	Hogs.
Allen.....	$5–$25	$5–$50	$25–$200	45c. per bu.	10c. per bu.	1½c. per lb.
Barber..	Discretion of Assessor.	$5–$15	$10–$50	10c. "	20c. "	1c. "
Brown....	One-third cash value			6c. "	22½ "	1c. "
Bourbon	$15–$75	$5 and upward.	$15–$200	value	value	1–3c. "
Clay.....	$5–$25	⅓ value	$15–$100	25c. per bu.	5c. per bu.	1c. "
Decatur...	value	value	value	30–35c.	5–8c. "	1½c. "
Doniphan.	....	....	....	25c. "	6c. "	1c. "
Jackson ..	$1–$20	$5–25	$25–$100	40c. "	....	1½c. "
Johnson ..	$10–$25	$5–20	$25–$100	30c. "	10c. "	....
Mitchell ..	$10	$10–$15	$10–$250	30c. "	7c. "	1½c. "
Wilson.	$10 and upward.	(new) $40	$75 and upward.	75c. "	15c. "	3¼c. "

These details do not reveal the worst features of the system, namely, the extent to which the assessor's discretion permits him to depart from the agreed basis for the county. It does show that the owner of 1000 bushels of corn in Clay County has it assessed at $50.00, while the less fortunate owner of the same amount in Wilson County will probably be charged with $150 on his corn account; that in paying the tax on hogs the Brown County man will only have to pay one cent per pound, while the Wilson man will have to pay 3¼ times as much. One thousand bushels of wheat in Brown County would have an assessed valuation of $60.00; while in Bourbon, this would be about $750; in Jackson, $400; in Baker, $100; in Wilson, $750. Even worse conditions exist in many other counties and upon other articles.

---

things actually exists in our state to-day. Millions of dollars worth of property escape taxation entirely as a result of ignorance, inefficiency or wilful dishonesty on the part of assessors. Other property is assessed at from 10 per cent. to 100 per cent. of its actual value according to the judgment or whim of the assessor." Governor's Message, January 15, 1895, in Documents of Kansas, 1893-4, p. 11.

For local purposes of taxation this would not matter so much; but where each city or township must contribute its quota of state taxes there is a constant tendency to undervalue property in order to shift the burden. The county reporting the lowest valuation is called upon to pay the least state taxes. Nor does the state board of equalization counteract this tendency. The board is constituted of officials incapable, from the various other duties imposed upon them, of giving the subject of equalization necessary time and consideration and without intimate acquaintance with local conditions. As a matter of fact, but three or four days are devoted to this work,[1] and even then all that the law permits the board to do is to increase or decrease the total returns from particular counties by such percentage as may be agreed upon. But the aggregate amount for the state must not be decreased. It is evident that inequalities due to any individual assessment cannot be rectified.

Another weakness already noted, is the fact that the equalization only affects the assessment for state purposes. The original assessment as fixed by the county board is retained for local taxation. Under the present law, the board is handicapped by a lack of power. But even with an increase of power it would still be impossible to attain any satisfactory degree of equality in the case of counties striving by every means to reduce their assessments. Such an increase might be beneficial; but it would by no means enable the board entirely to correct the inequalities of local assessments.[2]

---

[1] Proceedings of State Board of Equalization, p. 128, in Documents of Kansas, 1889.

[2] "There is absolutely no way for the state board of equalization to correct this evil. The only thing it can do when it believes the assessment of a county as a whole is too low, is to raise the assessment on all property, both real and personal. It cannot equalize individual, personal or real property under the present law. A bill will no doubt be passed at the next session of the legislature giving it authority to revise the equalization as fixed by the county commissioners. This would take the assessment out of the influence of local surroundings and would enable the state to have a just assessment" (*Kansas City Journal*, June 29, 1899).

From available statistics it appears that in the majority of counties, the assessed valuation of both real and personal property is about 33⅓ per cent. of the actual value. For some reason hardly clear to me, manufacturing and industrial concerns escape with a much lower basis of assessment. The figures presented in the Thirteenth Report of the Kansas Bureau of Labor are so suggestive in this particular that they are here quoted in entirety. While these figures are representative and not exhaustive, they may be taken as typical and approximately correct:

Industries.	Amt. of capital invested. (Buildings, grounds, machinery, etc.)	Amount of Assessed valuation.	Per cent. of Assessed valuation to capital invested.	Average amount capital invested, per plant.	No. reporting.
Packing-houses	$9,667,202	$581,075	6.0	$2,416,800	4
Salt-works	725,000	48,145	6.6	181,250	4
Coal-mining	1,908,089	251,145	13.1	127,206	15
Milling	1,641,074	341,265	20.7	36,468	45
Cement manufacturing	130,000	11,096	8.5	32,500	4
Miscellaneous mnfg	928,069	104,226	11.2	27,297	34
Planing-mills	93,000	12,560	13.5	23,250	4
Foundries	124,700	17,280	13.8	20,783	6
Brick manufacturing	122,250	15,051	12.3	13,583	9
Cooperage	55,600	5,895	10.6	11,120	5
Creameries	210,742	33,757	15.9	11,091	19
Grain and elevators	86,377	8,190	9.4	10,797	8
Plumbing	38,600	4,680	12.1	7,720	5
Carriage mnfg	21,000	3,678	17.4	7,000	3
Bakeries	35,600	2,996	8.4	5,933	6
Printing and publishing,	362,980	64,979	17.9	5,671	64
Bottling-works	52,100	4,911	9.4	4,736	11
Laundries	50,523	7,495	14.8	4,593	11
Marble and granite	35,600	2,584	7.2	4,450	8
Merchant tailoring	16,300	2,990	18.3	4,075	4
Cigar manufacturing	27,250	5,497	21.7	1,362	20
Totals and averages.	$16,333,256	$1,529,495	8.1	$56,516	289

The conditions prevailing in Kansas as to the assessment of personalty are similar to those existing in other states. Returns are incomplete and unfair. The possibility of deceiving the assessor places a premium on dishonesty, and a

large percentage of personal property escapes taxation entirely. The system of township assessors is largely responsible for the worst evils in local conditions. Uniformity cannot be obtained where there are many assessors, each with his own ideas as to valuations and property rights, and with his own and his neighbor's interests to protect.[1] Finally the assessment is often the work of men utterly unqualified for the task undertaken. Much less pains are taken in selecting a city assessor than a city street commissioner. Yet the former can, by ignorance, damage the public infinitely more than the latter by wilful plunder. The general defect in the present method is well stated in a recent governor's communication to the legislature:[2] "Now we have about 1,600 assessors, largely men with little practical experience, selected more because they have little else to do and are good fellows, each trying to keep his assessment down so that his township may pay less than its honest share of the taxes. These men are elected for one year and are dependent for their re-election upon the men whose property they are valuing."

The general property tax fails in Kansas to accomplish the true aim of all equitable taxation. Yet it is evident that its operation is attended with less unfairness than in many states of the Union. Kansas has fewer large cities and less diversity in industries than almost any other commonwealth. In so far as the agricultural interest is dominant, one of the worst features of the general property tax is avoided. But as a matter of fact, even in Kansas, the general property tax is becoming a single tax, and a single tax

[1] "So long as township trustees are employed as the assessors, just so long will unequal and unjust assessments be the rule. It is absurd to expect that these officers, holding their positions by the votes of those whose property they assess, will not each endeavor to secure for his neighbors and constituents all possible exemption from the burdens of taxation." Governor's Message of January 9, 1889, p. 17.

[2] Governor Morrill's Message of January 15, 1895, in Documents of Kansas, 1893-4, p. 12.

on the farmer's property at that. An examination of the returns of the assessors speedily reveals the fact that those who own no real estate are, as a rule, not taxed at all unless engaged in some mercantile business. In view of this circumstance it is impossible to escape the conclusion that there is a direct connection between the depression in Kansas farming lands so long complained of, and the undue burden of taxation falling upon this form of property. The burden of Kansas taxation falls upon the farmer as his property is tangible, upon the guardian, executor and trustee whose accounts are matters of public record, and upon the scrupulously honest man everywhere. Bonds, stocks, money, credits, notes and mortgages evade taxation regularly.

Mortgages in Kansas must be recorded at the Register's office and it would seem that with a little effort on the part of the assessor these might always be listed; but as a matter of fact they often escape taxation. In most cases the assessor fails to find them, and even when located it is difficult to determine from the Register's reports whether the mortgage has been paid in part or not. Many mortgage payments are in three or four payments and the mortgage is not cancelled until the expiration of the entire time. No one recognizes more fully than do the assessors themselves the fact that a large portion of personal property escapes assessment; but they realize fully their helplessness. If a man returns an incomplete list of his personal property the assessors are practically unable to discover or force him to disclose the true amount. True, there is recourse to the courts and the summons of witnesses; but the methods of concealing and removing personal property are so numerous that this ordinarily means only an additional burden upon the honest taxpayer.[1]

[1] The Fourteenth Annual Report of the State Bureau of Labor (Topeka, 1899) has appeared since the above was written. This report contains definite and conclusive evidence upon the escape of personalty in Kansas in the form of a comparison of the valuations

Corporation Tax

There has never been any distinct corporation tax in Kansas. Corporations are taxed, at the ordinary rate of the property tax, on the value of their capital stock over and above the value of their realty and tangible personalty. There is a special law for taxing insurance companies, which may for convenience, be classed as corporation tax. This tax is imposed on the gross receipts of the companies as distinct from the assessed valuation of their property. The law requires every fire insurance company doing business in a city having an organized fire department with an equipment to the value of $1000 or upward, to pay to the Superintendent of Insurance two dollars upon every one hundred dollars received from premiums on fire and lightning policies within the city. The money is paid into the funds of the Firemen's Relief Association of the various cities. In 1897, $16,239.90 was derived from this source.[1]

Prior to the special session of 1898 the law required all foreign insurance companies doing business in the state to pay annually to the insurance department, two per cent.

---

of probated estates with the assessors returns thereupon. Sixty-four estates, covering data from five counties, are shown to have included real estate appraised at $98,822.85 by the probate courts while the assessors valuation was $40,691.50; that is, the assessed value was 41.1 per cent. of the appraised value. With respect to personal property of the class known as goods and chattels, two hundred and forty-seven estates were examined from nine counties. These had a total appraised value of $371,577.74 and an assessed value of $38,725.60, making the appraised value 10.4 per cent. of the assessed value. In the case of bonds, mortgages, notes and other securities, one hundred and fifteen cases from seven counties yielded a total appraised value of $430,608.01, and an assessed value of $4045.00, or an assessed valuation of 9 per cent. of the appraised value. Debts and accounts to the amount of $48,893.72 from thirty-four cases covering four counties reporting were not assessed at all. Moneys, bank-bills and other circulating medium, from one hundred and thirty-two estates of eight counties, were appraised by the probate courts at $109,701.55 and were assessed by the local assessors at $1763, or 1.6 per cent. of the appraised value.

[1] Report of Insurance Department, pp. 45-8 (Topeka, 1898).

on all premiums received during the year.[1] The law was, however, designed to regulate the business of the insurance companies, rather than to provide a distinct source of revenue. Its immediate purpose was to make the insurance department self-supporting. If in any year the revenue thus derived proved insufficient for this purpose, the Superintendent of Insurance was authorized to assess upon the insurance companies such additional amount as might be required, subject to the provision that the assessment must be for an equal amount upon each company.

At the legislative session of 1898 an additional tax was imposed upon insurance companies. All foreign insurance, guaranty, and accident companies now pay an annual tax of four per cent. upon all premiums instead of two per cent. as formerly required. Domestic companies not organized under the laws of the state pay a state tax of two per cent. upon all premiums received, whether in cash or notes or on account of business done in the state. These taxes are assessed and collected by the state Superintendent of Insurance, who is made an elective officer with a term of two years. The taxes thus collected ultimately go to the general revenue fund. At the regular session of 1899 the legislature passed a law providing for the taxation of contracts of insurance made with companies not authorized to do business in Kansas. "All such insurance contracts shall be taxed in a sum equal to ten per cent. of the amount of premiums paid or contracted to be paid thereon."[2] This tax, when collected, is applied as follows: Three-fifths to the payment of the expenses of the insurance department and two-fifths to the treasurer of the city or township in which the property insured is located, for the benefit of the fire department. If no such department is organized, either paid or volunteer, this fund is devoted to the ordinary expenses of the city or township.

---

[1] This fund amounted to $17,005.39 in 1897, and was credited to the general revenue fund.

[2] Eleventh Biennial Session Laws, Topeka, 1899, "Act to provide for the taxation of contracts."

The corporation laws of Kansas, in so far as they relate to taxation, need thorough revision. As the laws now stand corporations are taxed through the local agencies under the general property tax. "The liberality of the state permits the creation of corporations for nearly every conceivable purpose, conferring great power and valuable franchises upon them, without any direct charge or expense whatever."[1] The result has been to flood the state with many corporations existing only in name, but possessing valuable privileges for future exigencies. A further abuse rests in the fact that many residents of other states became incorporated in Kansas and, engaging in business principally outside of the state, avoid taxation altogether.[2]

License Taxes and Fees

Properly speaking there are no state license taxes in Kansas. The charges which are sometimes so called are either fees or insurance taxes. The statutes, however, permit cities to levy license taxes, and a considerable local income is obtained from this source. The mayors and city councils have almost unlimited power in this respect. They may levy license taxes upon all "callings, trades, professions and occupations," including everything from a dog tax to a public lecturer's license.[3]

---

[1] Governor's Message, Jan. 16, 1889, Documents of Kansas, p. 23, 1887-8.

[2] "In Kansas it costs only the mere nominal fee charged for filing the charter to create a corporation conferring important powers and valuable franchises. For this privilege many states require all corporations organized for profit, in the prosecution of business enterprises, before chartered, to pay a bonus or fee to the state, based upon the capital stock. Such a law in this state would yield some revenues, cut off many of the abuses complained of and exclude parties who take advantage of our present law to incorporate here without expense to do business in other states." Message of Governor, 1891, in Documents of 1889-90, p. 26; see also Report of Secretary of State for same date, p. 6.

[3] As a rule all scientific and literary lectures and entertainments, together with concerts and musical or other entertainments, given by "home talent" are exempt from such taxation. In cities of the third class these are exempted by the state law.

License fees constitute an important source of state income. The treasurer's report for 1898 shows the following receipts of this kind:

Secretary of State	$ 2,188.75
Auditor	942.45
Bank Commissioner	6,742.40
Oil Inspector	9,384.46
Insurance Department [1897]	19,316.07
Total	$38,574.13

The fees paid to the secretary of state are charges for making copies of laws, resolutions, bonds, records, documents, or papers deposited in his office, and attaching thereto his certificate and his official seal.[1] The fees received by the bank commissioner are in accordance with the law requiring an annual examination of every bank doing business in the state, except national banks, subject to a charge varying from fifteen to thirty-five dollars according to the amount of the capital stock of the bank. The fees of the state oil inspector are paid by the owner of oils for testing, and vary from forty cents for a single barrel to ten cents per barrel for lots of over fifty barrels. Neither here, nor in the case preceding, is it designed that the fees should be a source of state income, beyond the amount required to defray the expenses of the respective departments.

By far the larger portion of state revenue from fees comes from the department of insurance. Every insurance company doing business in the state pays for the filing and examination of its charter and the issuance of a certificate of authority, the sum of fifty-five dollars; for filing the annual statement required, fifty dollars; for each license granted to agents, two dollars; for every copy of a paper filed in the Superintendent's office, twenty cents per folio; and for affixing the seal of office and certifying any paper, one

[1] For making the copy he is entitled to ten cents per folio, and for certificate and seal, fifty cents. The auditor may likewise be required upon payment of the same fees to make copies of records in his office, and to certify to them with his signature and the seal of his office.

dollar. In addition, each company is required to pay each year a license fee of fifty dollars into the school fund.[1]

As a means of raising state revenue this method is of doubtful propriety. There is constant danger of abuse and the principle has been repeatedly criticised by state officials. In cities and counties it serves to defray a considerable portion of the salaries of officials. Thus the salaries of the district clerk, sheriff, county treasurer, probate judge, county attorney, surveyor, register of deeds, and coroner, are largely paid by fees. The salary of each officer is fixed in amount, and the fees exceeding that amount are paid into the treasury to the credit of general fund.

Poll Tax and Road Tax

The poll tax has been abandoned in Kansas. Cities of the second and third class have the power to levy such tax, but it must be by city ordinance. The city council may impose a tax not exceeding one dollar on all able-bodied males between the ages of 20 and 50 years. I have not been able to find any record of such a tax having been imposed in any city within recent years. Under the territorial government, as has already been pointed out, a territorial poll tax was employed. Its collection was difficult and its use, as in other states, unsatisfactory. Upon the organization of a state government, the poll tax was aban-

[1] These fees apply to all foreign insurance companies, life and fire, and to all insurance companies organized under the laws of Kansas, respecting which no special charges or fees are prescribed, except joint stock fire insurance companies, mutual fire and mutual life companies organized under Kansas laws. The former pay twenty-five dollars for filing and examination of charter and issuance of certificate of authority by the superintendent of insurance; for any other certificate required, fifty cents; for filing the annual statement, ten dollars; for copies of papers filed in the office of department of insurance, ten cents per folio. Mutual fire companies are required to pay the same fees excepting the fifty cent fee. Mutual life companies pay one hundred dollars for the filing and approval of papers necessary for organization; for each licensed agent, fifty cents. These fees are in lieu of all other state fees.

doned and the permission given to cities has remained, in practice, a dead letter.

The poll tax, which may only be employed to secure municipal revenue, is, however, wholly independent of the county road tax of $3.00 which is authorized under the general statutes. Throughout the state all male persons between twenty-one and forty-five years of age, who have resided thirty days in the state, are required to perform two days' work on the public roads or streets, or furnish a substitute, or pay the sum of $3.00 to the road overseer or street commissioner. The refusal to comply with this is a misdemeanor subject to a fine of five dollars upon conviction before any justice of the peace. In addition to this regular tax, the county commissioners of each county may levy a road tax of not more than three mills on the dollar, on all taxable property except on the real estate in cities of over 2000 inhabitants.

Conclusion

In the preceding pages the effort has been made to show the actual status of taxation in Kansas. Not all the methods in use are evil; nor, on the other hand, are they all worthy of a large, growing, and progressive commonwealth. The general property tax might have served as the exclusive form of taxation in days when population was small, when differences in tax-paying ability were slight, and when the opportunities and incentives to evade taxes were less frequent. But now what seems most needful is greater variety in taxes to correspond with the various sources of individual income. The problem is to find taxes which cannot be avoided, which are not regressive, and which have stood the test of experience in older states where similar conditions have prevailed. Whatever changes are made in the immediate future should be such as will tend to develop in the state a broader and more equitable system of raising revenue. Legislation should be so shaped as to evolve new tax methods rather than to inaugurate an outright revolution in the existing system of taxation. There is no reason why

Kansas need pass through the period of costly experimentation which characterizes the experience of so many of the American commonwealths. There has been comparatively little tax legislation in the state. In most respects the earliest methods continue to prevail and consequently there are no local prejudices. There is a general feeling of dissatisfaction, but there is no unanimity of opinion as to what should be done. Public opinion will probably crystallize slowly, and as a result all essential reform must be gradual. There are certain changes, remedial in nature, that can be made at once, and it is to these that attention should first be directed.

For some time to come the general property tax will doubtless continue to be used as a prime source of state revenue, and the earliest possible legislation should contemplate an improvement of this tax. The county clerks, at a convention recently held, adopted a resolution urging the election of a county assessor for each county.[1] The officials making this suggestion have a knowledge and experience in regard to the practical working of existing assessment laws, that entitle their opinion to consideration.[2] In order to make the office as nearly non-political as possible, the assessor might more properly be appointed for a term of four years by the judge of the district court. The judge should have power to remove for cause and to fill vacancies, and by his advice and consent the assessor should have authority to appoint deputies.[3] Such a change if inaugurated would bring the most efficient men into the really difficult work of valuing property. It would tend to equalize valuations and would fix responsibility for any inequalities in county assessments to a degree not now attained. It would free the work from most of the local influences and

[1] Gov. Martin's Message, Jan. 9, 1889, Documents, 1887-8, page 18.

[2] In 1881 such a bill obtained the approval of the Senate committee on Finance and Taxation, but was defeated in the Senate chamber. Senate Journal, 1881, p. 741.

[3] This plan was, in substance, included by Gov. Humphrey in his recommendations to the state legislature, see Message of Jan. 16, 1889, p. 22.

jealousies now impeding it,[1] and finally the assessment of property at its actual value could be effected more quickly than under the present method.[2]

To secure the taxation of bonds, notes, mortgages, judgments and credits, a law providing that the county assessor should stamp all such papers and that they should not otherwise be received as competent evidence and hence not collectible would probably be effective. Any attempt to pass an unstamped paper should render the person subject to a fine not to exceed fifty dollars.[3] The only possible objection to this device would be that occasionally valueless papers would be taxed. This consideration seems to have been responsible for the defeat of the measure in Indiana. The objection is weakened by the fact that at the present time the attempt is everywhere made to tax such papers at their face value regardless of their actual value. The prime purpose of the added provision is the enforcement of a law almost universally approved. Whether the paper is of any real value is the concern of the holder and its taxation will only tend to decrease the amount of valueless notes and credits in existence.

Insufficient publicity is given the assessment records in Kansas at the present time. Nothing hinders the county clerk from making public the returns of the township assessors nor, on the other hand, does any law require him to expose such records for public examination. As a matter of fact when the county clerk does do this it is as an accommodation and not as a duty. The county assessors should be required to keep the assessments in a convenient form

[1] Compare the conclusions of the Revenue Commission in a state where conditions similar to those in Kansas prevail: "The county assessor, free from township jealousy, acting for the whole county, with a longer term, more time in each year, better equipped for finding out and valuing property, better paid, and more conspicuous in the eye of the people, ought to, and we believe will, do his work better than it is now being done by township assessors." Report of Revenue Commission for Illinois, p. viii.

[2] Gov. Stanley's Message of Jan. 10, 1899, p. 11.

[3] Similar bills have been introduced and barely failed of passage in the legislature of Iowa (1896) and Indiana (1899).

and place for public examination. Publication in the official county newspaper would strengthen still further the work of equitable assessment and is here recommended. A final recommendation for the improvement of the general property tax is the strengthening of the present method of county equalization, so that the present board should become a board for the review of the assessments of the county officer. The present limit of ten days should be extended threefold. The county commissioners have the time for such service and, generally speaking, are best qualified to act as a check upon the work of the county assessor who is, in turn, to be removed from local influences. Thus the county board becomes the immediate representative of the people. The services of the county clerk on this board should in that event be dispensed with. The county board is at present unable to add to any particular tax assessment personal property not already listed there.[1] This should be modified so that property not listed by the county assessor could then be included.

Such legislation would by no means perfect the system of taxation in Kansas; but it would improve very materially one source of revenue. It has been repeatedly stated in this paper that what the western states need at present is the development of more varied sources of public income. This can be accomplished gradually as conditions permit or demand. In Kansas an opportunity already exists for a considerable increase in variety of sources of revenue and the constantly increasing importance of intangible wealth will only accentuate this condition. The further development of the state's resources and the general industrial progress of the West will in time demand even further changes. These facts must be kept in mind in constructing a broader basis of taxation.

The taxation of other forms of wealth than those now actually taxed will make possible the separation of state and local taxes. This is an end much to be sought. It will

[1] Coal Co. *vs.* Emlen, 44 Kansas, 117.

remove the largest incentive toward low valuations and relieve the state of the necessity of equalizing the county assessments, a task most unsatisfactorily performed at present.[1] The suggestion is no new one. As far back as the early territorial period we find Governor Walker writing: "Now if Kansas, like the state of Illinois, in granting hereafter these lands to companies to build (rail) roads should reserve, at least seven per cent., of their gross annual receipts, it is quite certain that so soon as these roads are constructed, such will be the large payments into the treasury of our state, that there will be no necessity to impose in Kansas any state tax whatever, especially if the constitution should contain wise provisions against the creation of state debts."[2]

The first step towards providing the state with distinct sources of revenue should be the development of a commonwealth tax on certain corporations, leaving all others to be taxed for local purposes. Under present conditions the state might impose a corporation tax upon the gross receipts of railroads, telegraph, telephone, express, insurance and irrigation companies.[3] The application of this method would necessitate an amendment to the constitution of Kansas. With the present disposition of the people toward enterprises controlling large capital it is probable that this

[1] The separation of state and local sources of revenue is recommended in the Report of the Revenue Commission for Illinois, p. ix, the Report of the Tax Commission, Oregon, Salem, 1886, and Taxation in Iowa, Noble, pp. 6, 7. The Report of the Committee appointed by the Tax conference of Pennsylvania Interests to examine the tax laws of the American states finds that the best feature of the Pennsylvania system as compared with other states lies in the separation of state and local taxation (Harrisburg, 1892). Five states, viz., Delaware, New Jersey, Pennsylvania, Wisconsin and Vermont, have more or less completely accomplished this separation. Seligman, American Statistical Assn., Vol. I, p. 412.

[2] Inaugural, May 27, 1857, in Kansas State Historical Collections, V, p. 330.

[3] Preliminary to the development of the corporation tax it is essential that the corporation laws be so amended that no corporation could be created or organized under the laws of Kansas for purpose of profit except the incorporators have paid into the

could be secured.[1] Such a program would necessitate the surrender on the part of the townships and counties of all local taxes upon railroads except upon real estate holdings. The compensation to such localities would lie in their relief from the state property tax.[2]

Telegraph, telephone and express companies should be taxed in the same way.[3] Probably three per cent. of gross receipts, apportioned on the mileage basis would be adequate at first. The state is just beginning to tax the former companies while the express companies are scarcely taxed

---

state treasury a specified rate per cent. on the capital stock and a further rate per cent. whenever the capital stock is increased. One-tenth of one per cent. is suggested as a rate. The object in view is less to secure revenue than to prevent foreign or bogus corporations from taking advantage of the present tax laws. The payment is made once and is not in the nature of an annual tax, but rather of a franchise tax. Cf. Message of Governor Humphrey of Jan. 16, 1889.

[1] "If the capital of individuals and corporations or their incomes should be taken into account in arriving at assessed value of their property for taxable purposes, then the people through a constitutional convention and their representatives in the legislature should provide by law that such a basis should be made for assessments." Report of Board of Railroad Assessors (John N. Ives, Attorney-General).

The Constitution of the State of Kansas, Article XI, Section 1, requires the legislature to provide for a uniform and equal rate of assessment and taxation.

[2] The gross earnings of the railroads of Kansas for 1897 were $25,331,768.77 (Fifteenth Annual Report, Board of Railroad Commissioners, Topeka, 1898, pp. 23 and 29), and the total assessed value of all railroad property was $59,210,883.80. For the same year the railroads paid as general property tax, $2,030,175.20. This would require a rate of 8 per cent. to yield a sum equivalent to the present amount.

[3] "The Treasurer ventures the opinion that there should be devised a more perfect system for the assessment and taxation of telegraph, telephone, express and other companies of like character. The telegraph company is taxed only upon the cost of construction of its wires. The other companies are presumably taxed locally. The franchises of all these companies are valuable. Just what system would be best can be determined only after careful investigation. Possibly a per cent. of the gross earnings paid into the state treasury, if the legislature has the power to order it, would be the simplest way. The matter is worthy of consideration" (Treasurer's Report, 1885-6, p. 95).

at all. For this reason there are no available statistics upon which to base estimates for the amounts that may be expected therefrom.

Insurance companies are now taxed two, four and ten per cent. upon the premiums received. The Superintendent's report for 1897 states the total premiums of all companies—life and fire—as $2,846,183.80. Four per cent. tax here yields $113,855.36. This will probably be approximately the direct tax income of the state under the new law. It is too early yet to make a more definite estimate from this source. The irrigation tax, a percentage rate upon the receipts of irrigation companies should be the next to be applied to state purposes. The development of the irrigation system of the state should, however, not be crippled and present conditions hardly warrant the taxing of such companies more than for local purposes. Here a possibility of further extension in the future is all that is suggested.

Turning from the development of a state corporation tax there still remains open for Kansas as a lucrative and legitimate source of revenue the tax upon inheritances. No tax is more in accord with the democratic tendencies of the day, and toward no other tax has there been a more decided movement in western commonwealths during the recent years. In Iowa where conditions closely resemble those in Kansas, a three per cent. collateral tax is levied.[1] Missouri in 1895 adopted a progressive collateral inheritance tax of five per cent. on amounts up to $10,000 and seven and a half per cent. on all amounts in excess of $10,000.[2] Illinois has a tax on direct inheritances of one per cent. on amounts in excess of $20,000. For collaterals the rates are for uncles, aunts, nephews, nieces and their descendants, two per cent. on excess over $2,000. In other cases, after an exemption of $500, the rates are three per cent. on

[1] Noble, Taxation in Iowa (New York, 1897), p. 6.
[2] Seligman, Essays on Taxation, p. 134.

amounts from $500 to $10,000; four per cent. on amounts from $10,000 to $20,000; and from $20,000 to $50,000 a rate of five per cent.; above $50,000 the rate is six per cent.[1] The Illinois law, with its progressive features, seems to be particularly commendable. The revenue in Kansas from this source would hardly be comparable for some years with that derived in older states, yet there is no reason why this tax should not be employed immediately. With some such legislation as has been here suggested Kansas would be placed in line with the most progressive commonwealths, so far as taxation is concerned. State and local taxes would then be entirely separated. The state levy on general property would be abolished; taxes for local purposes would be raised by the assessment of real and personal property and by license taxes. Taxes for state purposes would be distinct taxes, such as the tax on gross earnings of certain corporations, and the inheritance tax. When it is remembered that the direct state tax is only $1,413,695.08,[2] and that the railroads during the same year paid in a general property tax of $2,395,551.73,[3] there can be no doubt of sufficient state revenue. Indeed, a considerable surplus would be realized either for distribution among the counties for local purposes or for application to the annual school fund, thus lightening the burden in the more sparsely settled portions for school purposes and making possible a more uniform school support. Not a change is here suggested that has not been tried in the crucible of experience. Not a suggestion is made which has not received the endorsement of skilled writers upon commonwealth taxation. Indeed, each provision is to-day in operation in many of the older states. Undoubtedly the result would not savor of perfection, but it would improve existing conditions. Democratic institutions are given to us to improve as our measure of intelligence and experience increases.

---

[1] *Ibid.*, p. 134.
[2] Report of State Auditor for June 30, 1898, p. 146.
[3] *Ibid.*, p. 308.

Public School Taxation

A discussion of taxation in Kansas seems incomplete without some reference to the method of raising revenue for the support of the public school system. No portion of the state tax goes to the school fund, but it is at this point that state and local taxes overlap. What the annual interest upon the permanent state school fund does not supply must be made up by local levies upon general property. It is only a few years since the one mill levy by the state was abandoned, and now it is proposed to restore the old state levy. This suggestion which would make taxation for school purposes a part of state taxation, and the close manner in which local and state revenue are here made to supplement one another, will probably justify a brief discussion of the matter in connection with a study of commonwealth taxation.

The present system of school taxation is unsatisfactory. The main revenue is derived from the levies made by the different school boards. In some districts a levy of two or three mills on the dollar will keep a good school for nine months, while in another almost adjacent to it, because of difference in amount and assessed valuation of property thirty or forty mills will only keep the school open four months, and then with an underpaid or cheap teacher and with insufficient furnishings and accommodations.

With a low property assessment the school board is obliged to levy a large rate in order to provide funds. There is, therefore, the same inequality in levying school taxes as in the general taxes. It is less grievous inasmuch as no part is paid as a state tax, and each district is independent of any other. If a district does not make an adequate levy it alone suffers, although the schools of the sparsely settled districts are more seriously injured. To show the existing inequalities, several district levies for 1897 are here given: Rice County levies range from 4½ to 40 mills; Wabaunsee, 4 to 32; Wilson, 3 to 34½; Barber, 2 to 32½; Saline, 3 to 29; Reno, 5 to 30; Butler, 4 to 31; Washington, 4 to 30½;

Woodson, 1 to 20; Shawnee, 3 to 27. It is not strange that where such gross inequalities exist in the tax rate required, there is a general dissatisfaction among educators. There seems to be no unanimity of opinion, however, as to the most satisfactory substitute. Several State Superintendents have urged in their reports that the one mill levy by the state should be restored and that it would be better if this were made two mills or even three. The same criticism would apply to this as to the present method of raising the state revenue. It would not rest equally on the different portions of the state. Equalization of the school tax would be as difficult as the equalization of the state tax is at present. A wiser suggestion is that the state turn to other sources of revenue than the general property tax, and then devote a portion of its income to the aid of the public schools. Such a plan would be in harmony with the earlier criticism that there should be an entire separation of state from local taxation. With a distinct state tax on corporations, insurance companies and inheritances, there would probably result a surplus over the needs of the state sufficient to provide for a large part of the expense of the schools.

In addition there should be a county school tax. This has been tried in California and is the basis of one of the best supported and most progressive common school systems in the Union. In Kansas the county tax might take the shape of a levy of four or five mills on the dollar. This might be laid on all the property of the county (cities of the first and second class excepted) by the county commissioners, and be collected as are other taxes. It should then be the duty of the county superintendent to apportion the funds thus raised among the school districts in proportion to the number of teachers required to supply the schools of the district. A limit to the number of pupils under one teacher is desirable, and where two teachers are employed the superintendent might be authorized to apportion twice as much of the county fund. The same ratio of increase

should be made for each additional teacher required. Thus the districts of the county would have equal facilities of support. It certainly would be possible for the county superintendent then to bring about uniformity of school work, a thing which every good superintendent in Kansas is now vainly striving to obtain. To supplement the county tax, a district tax might be levied as at present to provide for the erection and maintenance of school buildings. But this district charge should be in the nature of a special tax, and should not be devoted to the general maintenance of the schools. In this plan provision has thus been made for three regular sources of school revenue:

1. The county tax, *i. e.* a levy on the property of the county by the county commissioners, distributed equally among the districts.

2. The district tax, *i. e.* a levy on the property of the district by the district meeting, as a supplementary tax or for special purposes.

3. The annual school fund distributed as at present, but increased by the state setting aside annually a portion of its receipts from the regular state tax. In such a scheme the county and district levies ought not to exceed twenty mills on the dollar.

[Bibliographical Note.—1. Statutes of Kansas, 1855-99. 2. Public Documents of Kansas, Topeka, 1881-99. 3. Auditor's Reports, Topeka, 1861-79. 4. Reports of Railroad Commissioners, Topeka, 1896-98. 5. Report of Superintendent of Insurance, Topeka, 1897-98. 6. Reports of Bureau of Labor, Topeka, 1897-99. 7. Kansas State Historical Collections, Vols. I-V, 1881-92. 8. Holloway, History of Kansas, Lafayette (Ind.), 1868. 9. Wilder, Annals of Kansas, Topeka, 1875. 10. Spring, Kansas (in Commonwealth Series), Boston, 1894. 11. Giles, Review of the Tax System of Kansas, Topeka, 1872. 12. Taylor, Tax Laws and Decisions, Topeka, 1884. 13. Blackmar, Taxation in Kansas, Lawrence, 1897. 14. Daniels, Problems of Taxation, Topeka, 1894. 15. Marshall, The Industrial Hand Book, Winfield, 1890. 16. Poore, Charters and Constitutions, Washington, 1877.]

IV.

TAXATION IN MISSISSIPPI[1]

By CHARLES HILLMAN BROUGH

Economic Characteristics

Fiscal conditions in Mississippi have always been in harmony with the external structure of the state and with the internal conditions of its economic life. From April 7, 1798, the date of its organization as a territory, to the present time, Mississippi has been a commonwealth of landed proprietors and its fiscal policy has been largely shaped by the dominant class. Although land has always been the primary source of revenue, it was but natural that in the absence of industrial centers, the owners of landed estates should shift a portion of the tax burden upon the artisan and the tradesman. This is the explanation of the license-privilege system, which in 1897 contributed $352,-113 to the state's revenue.

The type of land-tenure, as well as the predominance of landowners, shaped the state's fiscal policy. The owners of large plantations, requiring slave labor for their cultivation, sought to discourage free, hired labor by placing a higher capitation tax on free negroes than on either whites or slaves. Thus, we find in the laws of 1822 a provision to the effect that the sum of seventy-five cents should be assessed and collected on each slave; the sum of seventy-five cents on every white male between the ages of twenty-one and fifty years; and the sum of three dollars on each and every

[1] For assistance in gathering materials for this study my special thanks are due Hon. A. Q. May, State Treasurer; Col. J. L. Power, Secretary of State; and Mrs. Helen D. Bell, State Librarian.

"free male of Color"[1]—a discrimination which continued in kind and became more intense in degree until the abolition of slavery, the system in which it was conceived.

But an influence vastly more important than the character of the people and the peculiarity of their industrial economy has shaped Mississippi's system of taxation. This influence is the Mississippi River. Like the Nile in Egypt, the Mississippi enriches its valley by a deposit of sediment; but unlike the Nile, its inundations occur at irregular intervals, and frequently when the cotton crop is in full bloom and ready for harvest. These overflows have necessitated the construction of levees, and the construction, maintenance and repair of levees have necessitated the creation of separate units of taxation and the levy of special taxes within these units. Thus, the alluvial land of the state has been divided into two separate levee districts, viz.: the Yazoo-Mississippi Delta Levee District, and the Mississippi Levee District,[2] both under the supervision of levee boards, having powers of eminent domain, bond issue, and taxation, within limits prescribed by the state legislature.

The legislature is empowered by the constitution of the state to impose, for ordinary purposes of maintenance and repair, a uniform ad-valorem tax of not less than two nor more than five cents per acre upon every acre of land within these districts, and a privilege tax upon every railroad operating within the districts; and for construction purposes an ad-valorem tax on all cotton grown within the districts is also authorized.[3] In accordance with the latter provision, the revenue laws of 1892, amended in 1896, impose a tax of one-fifth of one cent per pound on all lint cotton annually grown within the Mississippi Levee District, and a tax of one-fifteenth of one cent per pound on all seed cotton grown and not ginned therein, the proceeds from

[1] Revised Code of Mississippi, p. 285.

[2] The Yazoo-Mississippi Levee District embraces the counties of Couhoma, Desoto and Tunica; the Mississippi Levee District, the counties of Bolivia, Issequena, Sharkey, Warren and Washington.

[3] Constitution of Mississippi, Art. 12, Sec. 236.

both taxes to be used in the payment of a six per cent. interest charge on a bonded indebtedness of $500,000 incurred for construction.[1] These types of levee taxes, resembling special assessments in so far as they are payments for special benefits conferred, have their origin in the peculiar geographical and industrial conditions of the state.

Many of the radical constitutional provisions relating to taxation in Mississippi are explained by the political and economic traditions of the state. The taxation of corporations in the same manner as individuals may be regarded as the application of the democratic, leveling idea to fiscal affairs. The appropriation of the proceeds from the state poll tax to the support of the common school system and the constitutional right given a school district to levy additional ad-valorem and poll taxes in aid of its schools, illustrate the importance attached to elementary education in Mississippi. The exemption of maimed and infirm Confederate soldiers from the payment of most of the privilege taxes, is virtually a supplement of the state's pension system.

General Finances

Economic conditions have had as much influence in molding the machinery as in determining the forms of taxation in Mississippi. The existence of large plantations has caused sparse settlement, and sparse settlement has made the county the fiscal unit of the state. Since 1799, when the law provided that the general court of quarter sessions should make an estimate of necessary county expenses,[2] the county has been the unit in the apportionment, assessment and collection of taxes in Mississippi. State taxes are, indeed, levied directly upon the persons and property of individuals by the state; but county officials are held responsible for their assessment and collection.

Taxes have not only increased largely in amount within the past decade of Mississippi's history, but they have also

[1] Mississippi Laws, 1892, p. 48; *ibid.*, 1896, p. 167.
[2] Mississippi Laws, 1799, p. 121.

assumed a place of relatively increasing importance in the budget of the state. For the fiscal year ending December 31, 1887, the total receipts into the state treasury were $1,069,568; of which taxes, state and privilege, supplied $808,062, or 75.5 per cent. of the whole. For the fiscal year ending September 30, 1897, the total receipts into the state treasury were $1,840,754, of which taxes, state and privilege, supplied $1,440,684 or 78 per cent. of the whole. This increase, both in the quantity of tax receipts and the proportion which they bear to total receipts, is due partly to an increase in the rate of taxation, and partly to an increase in the assessed valuation of property. In 1887 the rate of the state tax on property was 3.5 mills on the dollar; in 1898, 6.5 mills on the dollar. The average rate for the decade was 5.2 mills on the dollar. The amount of property assessed in 1887 was: of realty $90,270,135, of personalty $39,617,119, making a total of $129,887,254. The amount of property assessed in 1897 was: of realty, $113,210,931, of personalty, $44,994,791, making a total of $158,205,722, or an increased valuation within ten years of $28,318,468, or 21.3 per cent. The gross privilege-tax receipts only amounted to $352,113 in 1897, as compared with $392,415 in 1887; but this discrepancy is explained (1) by the repeal in 1890 of the option theretofore given railroads of paying either privilege or ad-valorem taxes, (2) by the recent reduction in privilege charges and (3) by the enactment within the past ten years of rigid prohibition laws.

There is no hazard in the prediction that the recent industrial progress of Mississippi, as revealed by the records of incorporation filed in the office of the Secretary of State[1] will greatly increase the revenues accruing from the privilege-license system in the future. This is especially true because the industrial progress of the state has not meant an extension either of the industrial domain or of municipal

[1] Between January and December, 1898, five railroads, eight banks, three manufacturing establishments, six telephone companies, five compresses, six oil-mills and four steamboat and packet companies, all subject to the payment of privilege taxes, have been incorporated.

functions. The enterprises incorporated have been private concerns, and as such are subject to the payment of a privilege tax.

But decidedly the most potent influence making for both an absolute and relative increase of taxation in the state's budget is the rigid enforcement of the back-tax collection law by the State Revenue Agent. This officer, fortified by the law authorizing the collection of back taxes from corporations and individuals escaping assessment[1] and by a recent decision of the Supreme Court of Mississippi against the constitutionality of charter exemptions, has instituted and is prosecuting to a successful conclusion suits involving approximately $1,500,000. Already several of the largest railroad companies in the state have offered to compromise the back-tax suits pending against them; and so sure are the people of the ultimate result that the disposition of the surplus revenue expected to accrue from back taxes has been made an issue in the gubernatorial campaign.

Pari passu with the increased importance of taxation in the state budget there has been a gradual displacement of the fee system by the privilege-license system. This is the result of the natural merger of the license fee into the license tax, and the conversion of the special benefit conferred into a special burden. This absorption of license fees by license taxes has so minimized the budgetary importance of fees that in 1897 they furnished only $2,110 out of a total revenue of $1,840,754.

A most gratifying effect following in the wake of the increase in the volume of taxation has been the shrinkage in state indebtedness. Within the last decade the indebtedness has been reduced from $1,345,226 to $1,105,780, this, too, in spite of constantly increasing appropriations for common schools, Confederate pensions, asylum construction and repair of penitentiary farms. Greater complexity in civil life has necessarily enhanced the cost of regulation;

[1] Mississippi Laws, pp. 29 *et seq.*

but it is a hopeful sign that out of this necessity there has sprung the theory that sinking funds should be substantial surpluses and not sinking debts.

A summary of the fiscal status of Mississippi at the close of the last fiscal year is here appended:

STATE BUDGET FOR FISCAL YEAR 1897.[1]

Name of Account.	Receipts.	Expenditures.
State Property Tax	$1,088,571.34	
State Privilege Tax	352,112.56	
State Poll Tax	250,057.00	
Insolvencies	466.99	
State Tax, Special Loan	85,000.00	
Fees	2,109.93	
Land Redemptions	604.86	
Two per cent. Fund	98.59	
Three per cent. Fund	147.88	
Chickasaw School Land Fund	1,868.78	
General Fund	13,057.45	
Supplement Peabody Fund	1,500.00	
A. & M. College U. S. Fund	23,000.00	$20,791.83
Certificates of Indebtedness	1,800.00	12.00
Land Sales of Escheated Property	84.92	
Rents on Escheated Property	195.65	
Sales of Reports, Laws and Code	1,241.10	
Collections by Revenue Agent	355.65	
Land-Office Receipts	18,470.60	
Miscellaneous	10.75	3,563.46
Common School Appropriation		923,500.00
Judiciary		90,884.30
Executive		30,144.69
Legislative		36,216.97
Pensions		73,311.00
Railroad Commission		6,902.15
Commissions for Assessing		50,394.26
University of Mississippi		37,643.00
Lunatic Asylum		82,576.66
Blind Institute		9,455.59
Deaf and Dumb Institute		32,021.27
East Mississippi Insane Asylum		43,085.46
A. & M. College		39,085.04
Industrial Institute and College		23,410.00
Alcorn University		18,960.09
Holly Springs State Normal School		2,000.00
Natchez City Hospital		8,750.01
Vicksburg City Hospital		12,309.97

[1] Compiled from Report of State Treasurer, 1897, pp. 29-30; corrected by Treasurer's books.

Name of Account.	Receipts.	Expenditures.
State Board of Health		14,894.35
Library Fund and Expenditures		1,096.13
Interest on Mississippi four per cent. Bonds,		4,120.00
Interest on Mississippi five per cent. Bonds,		19,325.00
Interest on Mississippi six per cent. Bonds,		29,976.00
Interest on Mississippi Special Warrants..		22.99
County Tax on Land Purchases		3,636.44
Public Printing		4,479.53
Express, Postage and Stationery		4,119.45
Supreme Court Reports		4,272.00
Canceled Land Patents		11,327.59
Light, Heat and Water Co		4,000.00
Jackson Fire Department		1,000.00
National Guard		2,095.75
Mansion Repairs		
Contingent Offices		576.00
Total	$1,840,754.05	$1,649,958.98
Balance		190,797.07

TOTAL INDEBTEDNESS OF THE STATE ON OCTOBER 1ST, 1897.[1]

PAYABLE DEBT.

Bonds, Series "B," January 1, 1878	$ 450.00	
Mississippi 6 per cent. Bonds, Act March 18, 1886, due January 1, 1907	500,000.00	
Interest on same due and not paid	416.00	
Mississippi 4 per cent. Bonds, Act March 7, 1888	103,000.00	
Interest on 8 per cent. Bonds past due and not paid	202.00	
Mississippi 5 per cent. Bonds, Act March 18, 1896, due January 1, 1906	400,000.00	
Interest on same past due and not paid	682.95	
Special Loan under Act May 15, 1897	85,000.00	
Certificate of Indebtedness	2,463.00	
Railroad Tax Distributions	929.22	
Outstanding Warrants	12,637.24	
		$1,105,780.41

NON-PAYABLE DEBT (INTEREST ALONE TO BE PAID).

Chickasaw School Fund	$856,300.81	
Seminary Fund, University of Mississippi	544,061.23	
Agricultural 5 per cent. Bonds, due January 1, 1896	212,150.00	
		$1,612,512.04
		$2,718,292.45

[1] Compiled from Amended Report of State Treasurer, 1897, p. 33.

Development of Taxation[1]

The history of fiscal legislation and development in Mississippi is comprised within five distinct periods. These periods, with rough chronological indices, are (1) Territorial, 1798-1817; (2) Ante-bellum Statehood, 1817-1861; (3) Confederate and Post-Confederate Governments, 1861-1867; (4) Reconstruction, 1867-1876; (5) Modern, 1876-1898.

1798-1817. By an Act of Congress, approved April 7, 1798, that tract of land which to-day includes the states of Alabama and Mississippi, was constituted one district and called the Mississippi Territory. Major Winthrop Sargent, a native of Massachusetts, was appointed governor, and three territorial judges were named. The governor and judges were empowered to frame a code for the territory on the basis of the statutes of other states. This code, known as "Sargent's Code," has been characterized as "directly at variance with all statute law in America, and utterly repugnant to any known system of jurisprudence derived from the common law of England."[2] Certainly this is true of that part of it "directing the manner in which *money* shall be *raised* and *levied* to defray the charges which may arise within the several counties."[3]

According to its provisions, the court of general quarter sessions in each county was authorized to make an estimate of the county's average annual expenditure, and this estimate was submitted to the governor and one or more of the territorial judges for approval. The amount approved was apportioned among the several towns in the county by commissioners biennially appointed by the court of common pleas. If the town numbered sixty or more citizens, two commissioners were appointed; if one hundred or more, three commissioners. These commissioners received the

[1] This portion of the essay appears in substantially the same form in the Publications of the Mississippi Historical Society, Vol II, pp. 113-124 inclusive. Published by the Society, Oxford, Mississippi, 1899.

[2] Lowry and McCardle, History of Mississippi, p. 71.

[3] For provisions see Mississippi Laws, 1799, pp. 121-123.

returns of taxables in each township, and assessed the property therein. It was specified that the commissioners should ascertain "the names of all freemen, inmates, hired male servants (being twenty-one years of age) whether profitable or chargeable to the employers" and obtain "a list of all lands not being the property of the United States or appropriated to public uses, the tenements, houses, cabbins or other buildings wherein people dwell and which are rented and afford an income to the owners, and all ferries, stores, shops, warehouses, mills, gins, keel or batteaux boats of the burthen of twenty barrels and upward producing a yearly income, and of the bound male servants and male slaves above the age of sixteen and not exceeding fifty; draught oxen, saddle and draught horses, cows penned or kept up and immediately productive to the owners; together with the stock of cattle, including sheep and swine intended for market and thereby productive of annual income and profit." Lands were to be assessed "in just proportion to their value." Those not having visible property to the amount of one hundred dollars could not be assessed more than $1, "save by a due proportion of labour in the opening and keeping in repair highways and public roads."

This enumeration viewed in the light of modern interpretation, meant a graduated income tax, for the support of town and county government. The valuation of real estate was determined not by its intrinsic worth or actual selling value, but by the annual income (profit) which on the average it was deemed likely to produce. Taxation was altogether local, there being no territorial levy as distinguished from the biennial county and township levies. Localization of fiscal activity, an income valuation, and the fact that visible specific property bore all the burden, formed the characteristics of Mississippi's primitive tax system.

The collection of taxes, at this time, was vested in the county sheriff, who was *ex officio* the county collector. The commissioners appointed by the county court as assessors were allowed $1.00 per day, and the sheriffs were

authorized to keep one per cent. of their collections before making their reports to the county treasurer.

This crude fiscal device of Sargent remained in effect without substantial modification until 1815. In that year a law was passed,[1] which provided for a district territorial tax and specified that county taxes should be levied upon the property and objects enumerated in the territorial schedule.[2] Henceforth there was to be commonwealth taxation as distinguished from purely local taxation.

The territorial schedule comprised a general list of ratable objects with fixed valuations. Land was divided into six classes, each class having three qualities. The principal bases of classification were proximity to commercial centers and distances from watercourses. Thus, Class I contained all lands lying within eight miles of Natchez, the first quality of which was rated at $12 per acre; the second, at $8.00 per acre; and the third, at $3.00 per acre. Class II contained all lands lying within fourteen miles of the Mississippi River, with valuations according to quality, ranging from $7 to $10 per acre. Class III contained all lands lying not less than fourteen nor more than twenty miles from the Mississippi, with valuations ranging from $5 to $2 per acre.

Lands, lots and buildings within any city, borough or town were subject to a uniform ad-valorem tax of two mills; bank stock and merchandise, to an ad-valorem tax of two and one-half mills. Capitation taxes of fifty and sixty-two and one-half cents, respectively, were levied on slaves and white males above the age of twenty-one. Slave-traders were taxed five dollars on each slave brought into the territory, and this primitive privilege-license system was further strengthened by a tax of one dollar and twenty-five cents on "pleasurable carriages." The assessors and collectors were appointed by the governor and not by the

[1] Digest of the Statutes of the Mississippi Territory, 1816, pp. 415-424.

[2] County taxes could not exceed one-half of the territorial tax.

county courts, as theretofore, a change probably due to the differentiation of commonwealth from county taxation.

1817-1861. For lack of a better term, the period from 1817, the date of Mississippi's admission into the Union, to the outbreak of the Civil War may be designated "the period of ante-bellum statehood." Such a division in fiscal history is justified by the fact that during this period the tax system of the state underwent substantial change. The increasing expenses of state administration, the accumulation of state indebtedness, marked differentiation in industry giving rise to numerous classes of wealth, and progress in democratic thought, all demanded an extension of the state's fiscal system. Personal property became as important an object of taxation as land. The personal property list was no longer limited to slaves, pleasure carriages and bank stock, but included gold and silver plate, pianos, weapons, watches, clocks, cattle in excess of twenty head, saddle and carriage horses, money loaned at interest, merchants' and brokers' capital.

The taxation of personal property was supplemented by the license-privilege system with charges partly rated and partly specific. Thus in 1857 auctioneers and pedlers were taxed three per cent. on the amount of their sales; saloonkeepers, one-fourth of one per cent. on all sales of vinous and spirituous liquors by the gallon; traders in slaves, horses and mules, three per cent. on the amount of their sales; keepers of ferries, toll bridges and turnpikes, one-fourth of one per cent. on all receipts; circuses, $25 per each day's performance; nine-pin alleys, theaters or places for theatrical performances, $25 each.[1] Even the poll tax was widened in its application so as to include free negro males between the ages of twenty-one and fifty years.

Simultaneously with this external expansion the tax system underwent internal change. Land classification was abolished. Annual income was rejected as a device for the valuation of land, and a method substituted which is still

[1] Revised Code of Mississippi, 1857, pp. 72-73.

in vogue, viz., assessment according to actual value, sworn to by the owner or person in charge. In the process of assessment account was to be taken of improvements, proximity to navigation, towns, cities, villages or roads, and any other circumstance that might tend to enhance value.

The distinction between state and county taxes was preserved, but it was not the same as that between territorial and county taxes. County police boards were now authorized to levy a variable per centum rate on the amount of the assessment of the state tax and also a special tax for the erection and repair of county buildings. Under the territorial regime, county taxes could never exceed half the territorial tax; in the state period, county taxes frequently exceeded the state tax.

This period was also marked by a radical change in the machinery of assessment and collection. During the territorial period, the assessing and collecting officers were either appointed by the county or by the territorial governor; during the period of ante-bellum statehood, they were chosen directly by the people.[1] The county sheriff was *ex officio* the county collector, but the assessor was a separate officer with distinct functions. Both were biennially elected, and the compensation of each was fixed at five per cent. on the amount of the state tax assessed and collected. This per centum remuneration could not exceed a fixed sum; the assessor's maximum being $500 and the collector's $3,000 per annum. The fiscal machinery thus set in motion differs little from that in use at the present time.

Although the ante-bellum period witnessed the establishment of some of the main features of the modern system of state and local taxation in Mississippi, it cannot be designated as transitional in the sense Professor Ely uses the term transitional.[2] There was no change from the taxation

[1] Revised Code of Mississippi, 1857, pp. 70-72.

[2] Ely ("Taxation in American States and Cities," p. 131) designates the period from 1796 to the outbreak of our Civil War as transitional.

of specific kinds of property at varying rates to the taxation of the collective mass of property at one uniform rate. More kinds of property were taxed, but there was no disposition to group them under a common category at a uniform rate. The objects taxed were as specific, and the rates imposed were as variable as ever. The period was characterized by an extension of the tax system, but not by its simplification.

1861-1867. War demands extraordinary revenue and especially was this true of our Civil War. It is not strange that the Constitutional Convention of 1861, in which Mississippi's allegiance to the Union was formally renounced, supplemented the ordinance of secession by "an Ordinance to Raise Means for the Defence of the State."[1] This revenue ordinance provided for the collection from each *taxpayer* of an additional special state tax of fifty per cent. on the regular state tax and also for a tax from every *inhabitant* of three-tenths per cent. upon all money owned or controlled by such inhabitant, the moneys so collected to constitute a Military Fund. In 1863, it was further enacted that an additional special tax of fifty per cent. on the regular State tax be levied, to be known as the Military Relief Tax, the proceeds to be used for the relief of the destitute families of Confederate soldiers.

In 1865, in order better to provide for the families of soldiers, a direct tax in kind was imposed on the gross amount of all corn, in excess of one hundred bushels; of all wheat, in excess of twenty-five bushels; and of all bacon, in excess of one hundred pounds; on the tolls from all grain mills; on the gross profits of leather, whether manufactured for sale or received on shares as commission by tanneries; and on all woolen and cotton fabrics manufactured for sale.[2]

[1] For provisions, see "Proceedings of the Constitutional Convention," 1861, pp. 12-15. (Only one copy of this valuable document is in existence, this being the property of the Secretary of State of Mississippi).

[2] Mississippi Laws, February and March, 1865, pp. 3-10.

For the benefit of the County Indigent Fund,[1] the boards of police of the several counties were also empowered to levy a tax in kind of one-half of one per cent. on all corn, wheat and bacon grown and produced in the state.

The exigencies of war and the depreciation of the Confederate treasury notes, in which taxes were paid, necessitated not only the levy of special taxes but also an extension of the existing taxes. Notable among the additions were taxes of five cents per pound on all seed cotton over one bale of five hundred pounds lint, raised by a single hand; of two per cent. on the gross profits of iron foundries, machine shops, dealers in grain, provisions, etc.; of fifty per cent. on the wages of mechanics in excess of seventy-five per cent. profit above the actual cost of labor and material; of twenty cents on every $100 of railroad stock paying three per cent. per annum.[2]

Before the war, the state had encouraged railroad enterprise by tax exemption and had even gone so far as to levy special railroad taxes in the several counties in payment for stock subscriptions to these enterprises. During the war, financial expediency made necessary the withdrawal of all premiums upon industrial progress, and the husbanding of the state's resources for the conduct of military operations. Emergency taxation was supplemented as a fiscal device by the use of Confederate currency, depreciated cotton money and Mississippi treasury notes. This extreme economic tension was only relaxed after the last troops of the Confederacy had surrendered.

Upon the downfall of the Confederacy in 1865, the Constitutional Convention called by Governor Sharkey organized Mississippi as a state government. The financial problem confronting the post-confederate government was

[1] "Indigent beneficiaries" were divided into three classes, viz.: (a) those entirely dependent, (b) those deficient in breadstuffs, (c) those deficient in bacon. No beneficiary could receive more than six bushels of corn, one bushel of wheat and fifty pounds of bacon during the year.

[2] Mississippi Laws, 1862-63, pp. 153-155.

as difficult as that which confronted the Confederacy itself. Land was useless as an object of taxation, because it had no market value. Industries were paralyzed and needed bonuses rather than increased burdens. The debt contracted during the war had not been repudiated, and there was a new state government to support. How was the difficulty to be solved?

The legislatures of 1865, 1866, and 1867 acted in a sensible and direct way in dealing with the situation. A direct tax of one dollar per bale was levied on all cotton brought to market and sold; an inheritance tax of one per cent. on the gross amount of all collateral inheritance; a tax of three-tenths of one per cent. on annual rents and tenements. Privilege taxes were exacted from the larger corporations.[1]

This selection of taxable objects proved most fortunate, the cotton tax alone yielding sufficient revenue to support the whole state administration. The state indebtedness was scaled and Mississippi recovered rapidly from financial despondency.

1867-1876. The rule of "Reconstruction and Radicalism" fastened upon the state in 1867 meant signal retrogression in fiscal policy. This reign of ignorance and inefficiency was formally ushered in by a motley assemblage known as the "black-and-tan convention," so-called from the negroes and carpet-baggers who composed it. The special taxes levied to cover the profligacy and extravagance of this convention, whose expenses for a period of less than five months aggregated nearly a quarter of a million dollars, foreshadowed the future. Cotton, grist mills, sawmills, grocery, drug, and provision stores, ferry and wharf boats, railroad and steamboat companies, banks and hotels were all subjected to taxation. Even the inviolability of the press was not respected, and sums ranging from $20 to $50 were exacted from each daily, tri-weekly and weekly newspaper published in the state. The plunderers modestly

[1] Mississippi Laws, 1866-1867, pp. 412-414. A notable instance is the tax of $2000 *per annum* imposed upon express companies.

concluded their outrageous schedule with the provision "that a special tax of fifty per cent. on the State tax be levied in addition to the State tax now assessed upon real and personal property."[1]

The rejection of the Constitution framed by this "black-and-tan convention" and the conservative administration of Governors Alcorn and Powers, both property-owners and tax-payers in the state, served in a measure to check fiscal excesses. However, this improvement was but temporary. In 1869 the state levy was only one mill on the dollar of the assessed value of land; in 1870, five mills; in 1871, four mills; in 1872, eight and one-half mills; in 1873, twelve and one-half mills. This was only the state tax. In many counties a county tax of one hundred per cent. on the state tax was added, besides a special tax in some counties to pay the interest on their bonded debts, and a special tax in the incorporated towns of from five to ten mills on the dollar for town purposes. The total tax paid by citizens was two and eight-tenths per cent. outside of the cities, and from three and one-half to four per cent. in the cities.[2]

With the election and inauguration of Adelbert Ames as governor in 1874, the spirit of plunder animating the aliens and negroes burst forth with a fresh fury. The tax on land was increased to fourteen mills, a rate which virtually amounted to confiscation. Cotton was taxed $10 per bale and the proceeds invested in the Freedmen's Savings Bank. The poll was increased from two dollars to six dollars per capita, and the responsibility for the payment of the negro's poll was saddled on his white employer. This fiscal comedy reached its climax in the imposition of a one per cent. tax

[1] Mississippi Laws, 1868, pp. 215-220. This convention dropped the provision found in the Constitution of 1832 restricting the origination of revenue bills to the lower house. The Constitution of 1890 expressly declares that all bills may originate in either house and be amended and rejected in the other.

[2] Lowry and McCardle, History of Mississippi, p. 230. See also Barksdale, Reconstruction in Mississippi (Noted Men of the Solid South, p. 339).

on all amounts expended by the citizens of the state in travel.[1]

The people simply could not pay these taxes, and over 6,400,000 acres of land were forfeited. Driven to poverty by this confiscation, the tax-payers, in convention assembled, presented to the legislature a most respectful prayer for relief. The legislature treated the petition with contempt, an action which resulted in the organization of tax-payers' leagues over the state and the speedy overthrow of the carpet-bag government. This struggle between tax-payers and tax-layers in Mississippi is but another illustration of the truth of the saying of Edmund Burke that "from the earliest times the great battles for freedom have been fought out on the question of taxation."

But the price of victory was dear and the penalty paid for experience was great. In addition to an interest-bearing debt of $984,200, the carpet-baggers left outstanding on January 1, 1876, non-interest paying auditor's warrants amounting to $414,958. During the last six years of their short regime, they spent $8,501,438, nominally on account of the expenses of state government, an average of $1,484,-699 per annum.[2] They collected nearly a million dollars of what is known as the "Common School Fund," and spent it all, except $57,000, in United States bonds left in the treasury to the credit of that fund. This money was not spent on common schools, the purpose for which it was collected, but was misappropriated in ways never accounted for, and a debt against the state on account of that fund was left on January 1, 1876, amounting to $830,378. This, too, in spite of the fact that the average rates of state and county taxation during the six years in question were 8.87½ and 12.49⅔ mills respectively, making a combined average of $21.37⅙ on $1,000.

1876-1898. Indebtedness was thus the legacy which the modern period received from the period of reconstruction

[1] Mississippi Laws, 1874, p. 46.
[2] Reports of State Auditor and Treasurer, 1870-1876.

and radicalism. Although burdened with this incubus and threatened with increasing expenditures for educational and eleemosynary institutions, the modern period in Mississippi's fiscal history has been characterized by a decrease in both state and county tax rates and by a proportionate reduction in the amount and interest rates of the state indebtedness.

The first year of the new period, 1876, gave earnest of fiscal reforms. State taxes were reduced from nine and one-half mills on the dollar to two and one-half mills. The taxing power of county boards of supervisors was restricted by the passage of a law prohibiting such board from levying taxes for county purposes to an amount which, added to the state tax, would exceed sixteen and one-half mills on the dollar, except for indispensable purposes.[1] Unnecessary officials were dismissed, the common school system improved, sinecures abolished and salaries reduced.

This policy of economy in state administration has yielded substantial results. The average rate of state taxation for the past twenty-two years is 4.66 mills, as compared with 8.87½ mills for the six years preceding The average rate of county taxation for the same period is 11.1 mills as compared with 12.49½ mills for the six years preceding. Combining averages, we find a saving of 5.60½ mills on the dollar, or $5.60½ on $1,000.

Reduction in tax rates has meant a reversal of the policy of confiscation. Of the 6,400,000 acres of land forfeited for non-payment during reconstruction rule, all but 250,000 acres have been redeemed. Property valuation has largely increased, the value of real and personal property in the state to-day being estimated at $156,432,328. Conservative capital is seeking investment in all branches of industrial enterprise and economic progress is following in the wake of fiscal reform.

Although the total funded debt of the state has increased from $830,750 in amount and $45,507 in interest charges,

[1] Mississippi Laws, 1876, p. 94.

in 1876, to $1,105,780 in amount and $53,421 in interest charges, in 1897, this increase is not without warrant. The obligations, amounting to $876,257 in principal and interest, handed down from reconstruction times have all been paid. During the past twenty-two years $6,755,708 have been appropriated for and actually paid to common schools, as opposed to $1,323,766 appropriated and $327,742 paid during the six years preceding 1876. Higher education has been liberally supported, eleemosynary institutions established and equipped, and the Confederate pension fund, largely increased.

Yet these extraordinary expenditures have only caused an addition of $282,944 to the state's payable debt. This fact alone gives character to the present administration of Mississippi's finances and gives promise of a wise use of the commonwealth's taxing power in the future.

Present Tax System

The principal taxes now employed in Mississippi for commonwealth purposes are, in the order of their importance, the general property, the privilege, and the poll taxes. The tax on corporations which is found in many American commonwealths as a distinct tax, has not been differentiated in Mississippi from the general property and privilege-license taxes.[1] The tax receipts of the state for the fiscal year ending September 30, 1897, are shown in the appended table:[2]

	Assessed Valuation.	Receipts.
General Property Tax: Realty	$113,210,931	$735,871.05
General Property Tax: Personalty	44,994,791	292,466.14
General Property Tax: Railroad, Telegraph, Express and Sleeping-Car Companies	24,682,876	160,438.70
State Privilege Tax		352,112.56
Poll Tax		529,694.00
Total	$182,888,598	$2,070,592.45

[1] The constitution of Mississippi requires that the property of corporations be taxed in the same manner as that of individuals, which means the assessment of real and personal property by local officials. (See Constitution of Mississippi, Art. 7, Sec. 181.)

[2] Compiled from Report of State Auditor, 1897, p. 347, and from books of State Treasurer.

General Property Tax

From the admission of Mississippi into the Union in 1817, through the successive revisions of the state constitution in 1832, 1869, and 1890, the general property tax has remained *de jure* supreme as a fiscal expedient. During this period the tax has suffered few variations from its original form. The tax on land has always been rated rather than specific; while the tax on personalty has been rated, in so far as personalty has been subject to a general property tax, and specific in so far as personalty has been subject to a privilege tax. Until 1846, the tax on land was a percentage charge imposed according to quality. In that year land classification was abolished.

Classification according to quality was again adopted as a basis of assessment under the provisions of the famous "Madison Law," but was abandoned in 1890 when this law was declared unconstitutional.[1] The state levy has varied from two mills in 1822 to six and one-half mills in 1898, attaining a minimum of one mill in 1869 and a maximum of 14 mills in 1874. The latter year, it will be remembered, marked the apogee of financial mismanagement during the reconstruction era.

Before 1876, the rate was not uniform on those articles of personal property, now listed in the personal property blanks and subject to the regular state and county property tax. Of recent years, however, a tendency toward uniformity is perceptible and to-day the levy on all personal property for state and county purposes is the same as that on real property.

---

[1] The "Madison Law," so called from the name of its author, divided the lands of the state into five classes of eight qualities each. The classes were grouped according to counties, the object being "to equalize assessments in the different counties of the state." In 1890 the Supreme Court of the state held that grouping lands on this basis was in violation of section 112 of the constitution, declaring that taxation shall be equal and uniform throughout the state. For fuller provisions of the Madison Law, see Mississippi Laws, 1888, pp. 24-27.

Profiting from the excesses of the reconstruction period, the legislature not only fixes the state levy but also imposes a limit beyond which the county board of supervisors cannot go for any purpose. The revenue laws of 1898 fix this limit at 15 mills for state, county and school purposes with the proviso that "counties having an outstanding indebtedness may levy an additional tax for paying interest thereon, and a sinking fund to pay the principal if necessary, but the whole amount levied shall not exceed eighteen mills."[1]

Although the extent of the levy is thus rigidly prescribed, this limitation does not in any wise lessen the importance of the general property tax as a fiscal device. School districts, whether they be counties or municipalities, are dependent on the general property tax for the continuance of their schools beyond the term of four months guaranteed by state appropriation out of the poll tax receipts.[2] Levee districts are protected from overflow by a special ad valorem property tax of five mills, supplemented by a tax of one-fifth of one cent per pound on all lint cotton and one-fifteenth of one cent per pound on all seed cotton grown within the district.[3] In short, every unit of political and administrative organization in the state has adopted the general property tax as necessary to its institutional life. The machinery of the assessment, imposition and collection of the general property tax in Mississippi is complex and necessitates detailed treatment.

Exemptions. All taxable property brought into the state before the first of February is liable to the payment of taxes for the current year. "Taxable property" is a term

[1] Mississippi Laws, 1898, p. 7.

[2] The revenues accruing from the poll tax are used for this appropriation; but, when these are not sufficient, the deficiency is supplied by the general property tax. In municipalities, this special levy cannot exceed three mills without the consent of a majority of the taxpayers. (See Annotated Code of Mississippi, 1890, ch. 119, Sec. 4014.)

[3] Revenue Laws of Mississippi, 1896-97-98, p. 45.

of relatively limited content in Mississippi because of the long list of exemptions.[1] This list includes:

1. Public property, real or personal.

2. Private property, real or personal, belonging to any religious or charitable society or incorporated educational institution, when not used for profit.

3. Property held and occupied by the trustees of schools; also, township school lands used for the benefit of public schools.

4. Farm products raised in the state, when in the hands of the producers; farming implements, and all property of agricultural and mechanical associations and fairs held for the promotion of agricultural objects.

5. Wearing apparel, not including jewelry or watches; provisions on hand necessary for family consumption; household furniture, not to exceed $250 in value; libraries and works of art not kept or offered for sale as merchandise.

6. Poultry, two cows and calves, ten head of sheep or goats, ten head of hogs, and all colts foaled in the state under three years old.

7. Permanent factories established in the state before the first of January are exempt for a period of ten years.[2]

Assessment. The law provides that every person shall be assessed in the county and municipality where he resides at the time of assessment.[3] Real property is assessed in the county in which it is situated, as is personal property having a situs distinct from the person of the owner.[4] Banks and other corporations are assessed in the county in which the principal office is located; if there be no principal office, then in the county or counties in which the business is transacted. Money loaned at interest or employed in dis-

[1] Annotated Code of Mississippi, ch. 116, Sec. 3744.

[2] Until 1894, factories belonging to a trust, combine or pool did not enjoy this exemption. In that year the discrimination was withdrawn. (See Mississippi Laws, 1894, p. 26.)

[3] For provisions relating to assessment of taxes, see Annotated Code of Mississippi, 1890, ch. 116, Secs. 3744-3801.

[4] Colbert *vs.* Leake Co., 60 Mississippi, 142.

count is taxable in the county where the capitalist resides or has a place of business, or is temporarily located. But if a loan be made to a person in the state by a non-resident, who has no place of business, location or agent in the state, the courts have decided that this is not taxable in the state, notwithstanding negotiations for the loan be made by persons in the state and the loan be secured by property in the state.[1]

On the first day of February of each year the state auditor is required to furnish the clerk of the board of supervisors of each county with three copies of assessment rolls, and four books each of land and personal rolls to counties having two judicial districts. One of the personal assessment rolls and four books each of land and personal rolls, are delivered to the assessor; the others are kept by the clerk of the board of supervisors to be used in making copies. Personal property and polls are assessed between the first day of February and the first Monday in June of each year; real property, between the same dates every four years.

Cash value at the time of assessment usually fixes the taxable basis of property in Mississippi. Thus, capital stock is the basis adopted in the assessment of corporations. Banks and railroads furnish notable exceptions to this rule.

Banks. This system of taxing banks may be summed up as the separate taxation of real estate plus the taxation of the shares in the hands of the individuals, whose tax is generally paid by the bank and then withheld from the dividends. Formerly there was a distinction made between banks that were corporations or joint stock companies, and those that were not. In the one instance, capital stock was taxed; in the other, "the sum of all undivided profits or surplus or accumulations of any sort constituting a part of the assets of the bank." This distinction was abolished by an act approved February 11, 1898.[2]

---

[1] State *vs.* Smith, 68 Mississippi, 79.
[2] Mississippi Laws, 1898, p. 8.

Railroads. Railway companies are required to list their real and personal property, capital stock, gross earnings, equipment, investments, cash assets and the value of their franchise, all of which must be taken into account by the State Railroad Commission[1] in assessing railroads. It is provided that the assessment rolls distinguish between the railroad property in counties, cities, towns, villages and levee districts, so that the tax may be justly apportioned between the state and its local units. We shall see later that this railroad property tax is supplemented by a railroad privilege tax.

Land is assessed according to its actual value as estimated by the owner or person having it in charge. The law provides that improvements, proximity to navigation and any other circumstance that tends to enhance the value of the land be taken into consideration in making up the assessment roll, which, in addition to the lands of private individuals and corporations is also to include lands sold for taxes and school lands when leased. The assessment roll must be completed and delivered to the clerk of the county board of supervisors on or before the first Monday of July, and must remain on file subject to objection for at least two weeks.

Equalization. On the first Monday of August the board of supervisors sits as a county board of equalization. Although this board has no power, under the state constitution to raise or reduce, *in solido*, the assessment of a particular class of lands in a county;[2] it can change the assessment in cases of over-valuation due to clerical errors or to change of ownership after assessment, and it can take account of increase of value due to the erection of buildings or the supply of improvements.

Collection. On receipt of the assessment rolls, the sheriff begins the collection of taxes.[3] The county tax is added to

[1] An elective commission, composed of three members, having general powers of supervision over common carriers.

[2] Anderson *vs.* Ingersoll, 62 Mississippi, 73.

[3] For provisions relating to collection of taxes, cf. Annotated Code of Mississippi, 1890, ch. 116, Secs. 3801-3851.

the state tax and collected with it. Both the assessment and collection of taxes are vested in the collector, where land liable to taxation has been left unassessed by the assessor, or where it has become liable to taxation since the last assessment. Again, certain taxes may be paid directly to the state auditor, especially by persons having taxable property in counties where they do not reside.

After January 15 the collector is authorized to advertise for sale all land on which taxes are unpaid, the sale to occur on the first Monday of the March following. If the taxes remain unpaid at that time, the land is sold to the highest bidder. Property owned by a person in one county is liable for delinquent taxes in another, and the collector is authorized to collect such taxes, with five per cent. interest thereon. Land may be redeemed within two years by the payment of the total amount for which it was sold, together with all costs, twenty-five per cent. damages upon the amount of all state and county taxes that may have been imposed on the land since the sale, and five per cent. of the redemption money. If sufficient real and personal property cannot be found to cover delinquent taxes, the debts due the delinquent may be sold by the collector, subject to redemption six months from the date of sale.

Each county collector is required to make monthly settlements with the state auditor, and final settlement with the auditor between the first and fifteenth of September of each fiscal year. As compensation, the collector receives from the state five per cent. on the state taxes, exclusive of the poll tax, collected by him and three per cent. on the poll taxes; from the county, five per cent. on the first ten thousand dollars or less, and three per cent. in excess of that amount. The assessor receives five per cent. of the amount of the state tax on his assessment roll, the same to be not less than $300 nor more than $3000.

Criticism. With this description of the general property tax as it exists in Mississippi, we are in a position for objective criticism. The tax is strongly intrenched in the

traditions of the people, yet it has manifest weaknesses. In the rural and timbered districts of the state the general property tax is virtually a real property tax. Personalty is concealed and land bears the brunt of the burden. Speculators in warrants escape unscathed, while investors in timbered lands pay a heavy penalty for their confidence in the state's future. This tendency of personalty to evade taxation is not as pronounced in Mississippi as in other American commonwealths; indeed, the opposite tendency of a proportionate decline in real property values is rather to be noted. Thus in 1897 the valuation of personalty was $173,394 greater than 1896, while the valuation of realty had remained stationary. Yet evasions of personalty are apparent here as elsewhere, and farmers owning depreciating land feel keenly the incidence of the shifted burden. For this reason, it is the belief of the writer that the general property tax in Mississippi should be supplemented by a graduated income tax.

That provision in the state constitution which makes corporate property subject to the payment of the general property tax does not work well in actual practice. Railroad, telegraph, sleeping-car and express companies, which pay a state privilege tax in addition to the state and county property tax, naturally complain of double taxation and seek to evade the payment of the property tax by securing charter exemptions.[1] If successful, the evasion plainly

[1] Section 13 of Article XII of the constitution of 1869 provides that "the property of all corporations for pecuniary profit shall be subject to taxation the same as that of individuals." Section 21 of Article XII provides for a uniform ad valorem tax on all property.

Soon after the adoption of the constitution of 1869 there was considerable railroad activity in Mississippi, and the new corporations organizing in the state employed skilled legal talent to secure for them the best advantages consistent with the provisions of the organic law. One of the first companies seeking a charter under this constitution was the Mobile and Ohio North Western Railway, and one of the most complex and skillful instruments ever drawn is the charter of this company granted by the legislature of 1870. Under the terms of the now famous "section 21" of this charter, all taxes to which the said company should be "subject" for a

means a loss of revenue to the state that could be saved by the imposition of a more equitable corporation tax; if unsuccessful, unwilling payment produces contagious antipathy and retards the state's industrial growth. The value of property, even when modified by other criteria, is a poor basis of corporate assessment, for when used as such it discourages improvements and is weakened by local inequalities. To the adoption of this false criterion, and to double taxation must be charged the fact that the railroad mileage of Mississippi has only increased 293 miles within the last eight years.

The withdrawal of corporate property from the scope of the general property tax is imperative. That done, the way

---

period of thirty years, were "appropriated and set apart," to be applied to the payment of the debts and liabilities of the company, incurred in the construction of the road. It was provided, however, that whenever the profits of the company enabled it to pay an annual dividend of eight per cent. upon its capital stock, over and above the payment of its debts and liabilities, then the appropriation of the taxes was to cease and the taxes were to be paid.

This section twenty-one was afterward adopted by all other corporations entering the state, and was copied into nearly all the charters thereafter granted by the legislature.

But a more dangerous mode of evasion than "section 21" of the charter mentioned, has been created by the interpretation of section 13 of the Constitution of 1869 given by the Supreme Court of Mississippi in 1878. The court took the plain and simple language of this section and announced that the framers of the constitution meant that the property of all corporations for pecuniary profit should be "subject" to taxation, the same as individuals; instead of the obvious meaning that such corporations should be "subjected" to the same taxation as individuals. On this word the court held that the legislature had the right to "subject such subjects" to taxation or not, as it chose. This practically annihilated section 13 and left the legislature free to grant exemptions, *ad libitum*.

It has not been difficult for railroads to secure charters granting exemption from the property tax so long as the annual dividends are below 8 per cent., and as it is an easy matter to refrain from paying 8 per cent. dividends, the railroads of Mississippi have practically escaped the ordinary property tax. In June, 1898, however, the Supreme Court denied the right of the legislature to grant specific exemptions, and declared that only temporary immunity from taxation can be granted, by way of encouraging home industry. Upon the strength of this decision, the State Revenue Agent is prosecuting the well-known back-tax suits.

will be clear for either the creation of a separate corporation tax or the use of the privilege-license system in lieu thereof. Either method would remedy the evil, and, if properly adjusted, insure a more equitable basis of assessment and a larger revenue.

Again, the non-existence of a state board of equalization has led to inequalities in the assessment of the general property tax in different counties. Very few counties in the state have a common standard, and where property overlaps contiguous counties the result may be described in the phrase which Mr. Goschen has employed in another connection: "a chaos as regards authorities, a chaos as regards rates and a worse chaos than all as regards areas."

Some degree of uniformity is observed in the assessment of different individuals within the same county, by reason of the fact that the county board of supervisors is constituted a county board of equalization. However, it is questionable whether the appointment of five representative taxpayers from different parts of the county to serve as county board of equalization—a method in vogue prior to 1884—would not secure a greater degree of uniformity than the present device. Certainly it is true that variety in rates and in assessments in different districts is as great an evil as unequal assessment within the same district. For the betterment of the general property tax in this particular the writer would suggest the establishment of a state board of equalization with powers analogous to those possessed by the Railroad Commission.

There is also a degree of rigidity and complexity in the machinery of the general property tax in Mississippi which is always annoying and sometimes expensive. A typical illustration of the annoyance caused by the rigidity of the system is seen in that provision which requires the county collectors to make their final settlements with the auditor "on or within ten days after the first day of September."[1] The auditor informs the writer that it is a physical impos-

[1] Annotated Code of Mississippi, 1890, Sec. 3840.

sibility for him to settle with seventy-five collectors within ten days. According to law, the tax-collections on both the realty and personalty rolls must be in by the first Monday of August, and the fiscal year closes September the thirtieth. This leaves a margin of two months in which settlements might be made. An obvious improvement would be to give the auditor and sheriffs at least half this time to make their settlements.

A notable illustration of the expensive complexity of the system occurs in connection with the annual state appropriation for common schools. The poll tax receipts, which are diverted exclusively to the common school fund, never cover this appropriation. Thus, in 1897, the amount appropriated for common schools was $923,500, while the poll tax receipts for the same year amounted to $250,257. This deficiency, as we have seen, is supplied by the state tax on the property. The Code of 1890 provides that "the county and municipal treasurers shall report to the auditor of public accounts the amount of state poll tax collected, which amount shall be a credit on the sum due the county or separate school districts from the (school) distribution fund."[1] But all state ad valorem taxes, for whatever purpose used, must be forwarded by the county collector to the state auditor to be apportioned by that official among the counties.[2] This involves delay and expense items of no slight moment in connection with the distribution of the school fund. It would seem to be perfectly practical to treat that part of the general property tax, diverted for school and other specific purposes, in the same way as the poll tax, simply requiring the county collectors to make a report of the amount collected by them and held for distribution. This would mean a saving in expressage and a gain in simplicity.

The complexity characterizing the machinery of the general property tax in Mississippi appears even in the laws

[1] Annotated Code of Mississippi, ch. 116, Sec. 3745.
[2] Idem., Sec. 3850.

fixing the compensation of the tax officials. Recently a test case was argued before the State Supreme Court involving the construction of the act which fixes the compensation of an assessor at five per cent. of the amount of the state tax on his assessment roll, the same not to be less than $300 nor more than $1000.[1] The Attorney General contended that the assessor was entitled to five per cent. on the state tax, whether on the personal assessment roll or on both the real and personal rolls. The argument of the assessor's attorney was that each roll was separate and distinct from the other, and that the minimum of $300 was due on the realty roll every fourth year, even though both compensations should together be more than the maximum. Variance in the construction of law is only a typical illustration of the confusion resulting from a maximum and minimum fee-compensation system. The writer believes that this confusion might be avoided by substituting for the maximum and minimum fee system a scale of graduated salaries.

With these practical defects demanding correction, the general property tax in Mississippi seems to invite sweeping reform. Yet its absolute abolition in a state, where incomes are small and property holdings large, is out of the question. An income tax might supplement it, but could not supplant it. Corporate property might well be withdrawn from its inclusion, but individual property could be reached in no other way.

Privilege Taxes

Mississippi, in accord with the general practice of southern commonwealths, imposes a privilege-license tax on well-nigh every occupation. An examination of the present revenue laws, reveals the fact that there are one hundred and nineteen occupations to which licenses must be issued as a condition precedent to the transaction of business.[2]

---

[1] Mississippi Laws, 1884, p. 17; also Annotated Code, 1890, Sec. 2017.

[2] Mississippi Laws, 1898, pp. 8-29.

The importance of the privilege-license system in Mississippi is conspicuous. From the time when the dominant landed proprietors of an ante-bellum regime demanded the taxation of other objects than their farms and estates, to the present day, when the need of revenue and a sentiment in behalf of local protection sustains what would seem to be a fiscal anachronism, the privilege-license system has been an important source of revenue.

Of recent years the number of occupations subject to the payment of licenses has multiplied and the charges have increased. In the early laws we found the privilege schedule limited to auction sales, billiard tables, bowie-knives, nine-pin alleys, pedlers, race horses or tracks, taverns, groceries and theaters. An examination of this list shows that the articles specified are principally luxuries, the restricted consumption of which was deemed desirable.

In striking contrast to this limited use of the privilege system is that implied in the revenue laws of 1898. Here the predominance of the idea of revenue over regulation permits of no discrimination between necessary goods and luxuries, and between useful and useless occupations. Railroads and lawyers are placed on the same footing with merry-go-rounds and dealers in hopfenweis. Bed-spring dealers are as important in the eye of the law as boarding-house keepers.

This enlargement of the scope of the privilege-license system indicates a gradual movement away from sole dependence upon the general property tax, a movement accelerated by the practical defects of the latter and the need of applying a fiscal differential to the modern complex industrial organization. The rigidity of the state constitution has necessitated the taxation of corporations in the form of a privilege-license tax. That the taxation of corporations has taken definite form in the privilege-license system may be seen from the fact that railroad, express, sleeping car, telephone, telegraph and insurance companies are subject to the imposition of a privilege tax on those elements supposed to represent their taxable capacity.

Accident-insurance companies pay $250 per annum; life insurance companies a graduated tax of $250 for the first year, $500 the second, $750 the third and $1000 for the fourth year and thereafter. Insurance agents are also subject to a privilege tax, rated according to the size of the city or town where their business is transacted. Thus, an insurance agent doing business in a city of 5000 or more inhabitants, pays $40; in a city of more than 2000 and less than 5000 inhabitants, $25; in a town or village of less than 2000 inhabitants, $20; other insurance agents, $10.

Express companies pay a privilege tax of $500, together with a tax of one dollar for each mile of railroad along which they operate, and a local property tax according to charter exemption and gross earnings. Railroads are divided into four classes according to gross earnings.[1] The first class pays $20 per mile; the second $15; the third $10, and narrow gauge $2. An interesting provision was inserted in the laws of 1898, whereby railroads claiming exemption from state supervision under maximum and minimum provisions in their charter are compelled to pay an additional privilege tax of $10.[2] Sleeping and palace-car companies pay $200 each. Telegraph companies pay $250; or if the line is less than one thousand miles, twenty-five cents per mile. Telephone exchanges are graded according to the number of subscribers. Thus, an exchange with twenty subscribers or less pays five dollars, while one with more than one hundred and fifty subscribers, pays one hundred dollars.

Other corporations following specified lines of business fare the same as insurance, transportation and transmission companies, paying a privilege tax, either fixed or graduated, on some element of some taxable capacity. The element of

[1] The classification must be made by the Railroad Commission annually, on or before the first Monday of August, and the taxes be paid on or before the first day of December. (See Mississippi Laws, 1898, p. 23.)

[2] This provision is simply a means of reaching through the privilege tax railroads claiming charter exemption from the general property tax.

taxable capacity varies greatly according to the nature of the business. On cotton-gins the tax is fixed; on cotton compresses it varies with baling capacity; on cotton-seed oil mills, with the amount of capital stock. Auctioneers, barber-shops, bicycle dealers, brokers, coal dealers, ferries, hotels, junk dealers, livery stables, meat markets, photograph galleries, restaurants, theaters, warehouses, electric light, gas and water supply companies, pay in proportion to the size of the city, town or village in which they are located. Building and loan associations, fertilizer companies, and stores pay in proportion to the value of their stock. Brick-yards, ice-factories, liquor dealers, lumber yards and saw-mills pay in proportion to their output. Billiard and pool tables, bottling establishments, breweries, bands of gypsies, circuses, cigarette dealers, dealers in deadly weapons, dentists, druggists, guarantee companies, hack-lines, horse traders, lawyers, lightning-rod agents, live-stock insurance companies, piano factories, second-hand clothiers, stave and spoke factories pay a fixed amount.

Pedlers and railroad eating-houses furnish interesting exceptions to the four bases of classification enumerated, *i. e.* location, value of stock, output and fixed amount. Pedlers pay in proportion to their transportation facilities. Thus, a pedler with one horse, or mule, and wagon, is taxed twice as much as a pedler on foot; a pedler with two horses or mules, and wagon, twice as much again. Railroad eating-houses pay in proportion to the number of daily trains making stops for meals. Where two or more passenger trains are running on trunk lines, the privilege tax is $125; where there is only one such train, $50.

However variable may be the basis of assessment, the imposition and collection of the privilege tax are comparatively simple.[1] The law provides that insurance, telegraph, express and sleeping-car companies, building and loan associations and commercial agencies shall pay the tax directly to the state auditor. All other corporations and persons

[1] For provisions relating to, see Mississippi Laws, 1898, pp. 29-33.

obtain their license from the county sheriff. In any case where it is inconvenient to obtain the license from the sheriff, it may be procured from the auditor. The auditor is required to prepare license blanks and issue them to the sheriff of the county, who is held responsible for the collection. Privilege taxes thus collected must be reported monthly and paid into the state treasury as other taxes, and any defalcation by a delinquent collector must be published at once by the auditor. Licenses are good from the day of issue, except in the case of dram-shops, where they date from the granting of the license. No license can be granted in a "dry" county, or where the majority of the legal voters petition the board of supervisors to prohibit the opening of saloons. A failure to exhibit a license on demand is considered a *prima facie* evidence that it has not been paid and that the privilege is unlawfully exercised. For non-payment or forfeiture a penalty is imposed not less than double the tax imposed, or imprisonment in the county jail not more than six months or both.

Under no circumstances can any privilege be taxed by a county or municipality to an amount exceeding fifty per cent. of the state license; and a privilege tax imposed on insurance, telegraph, and sleeping-car companies, building and loan associations, is entirely exempt from county and municipal taxation. With the exception of the fifty per cent. local tax referred to, the privilege-license system in Mississippi is solely a source of commonwealth revenue.

As a supplement of its pension system the state exempts indigent Confederate soldiers and sailors, their wives or widows, from the payment of the tax on all privileges save those on dealing in liquors, cigarettes, deadly weapons, jenny-lind or pool tables, or like contrivances kept for amusement, second-hand clothing, and hotel keeping. Thus, the privilege-license system in Mississippi operates directly as a means of local prohibition and as a source of commonwealth revenue, and indirectly, as a bounty to Confederate soldiers and sailors. As a supplementary fiscal device levied on

general categories, the system is popular and practically beneficent. Especially is this true of the railroad privilege tax.

Until very recently it has been well-nigh impossible to collect any property tax from railroads because of their claims of charter exemption. The privilege tax has been the only way of reaching them. Thus, in 1888, a typical year, the percentage receipts from railroad property amounted to only $210, while the railroad privilege tax aggregated $140,792.

Recent reductions in the rate per mile of the railroad tax imposed,[1] and the legal compulsion placed upon railroads to pay both privilege and percentage taxes, have reduced both the absolute and relative importance of the railroad privilege tax. Thus, in 1898, the percentage receipts from railroads were $109,833, while the railroad privilege tax was only $26,625. It may, however, be confidently predicted that the decline in the importance of the railroad privilege tax is only temporary. An estimate of gross earnings is more satisfactory to all parties concerned as a basis of assessment than valuation of property. An increase in the rate per mile to its old proportions would place the railroad privilege tax on an independent footing, and avoid the double taxation to which railroads are now subjected.

Although regressive, easily shifted and undemocratic in theory, the privilege-license system is warranted in Mississippi by its practical results. It furnishes the state a revenue of over $300,000 per annum, and is regarded favorably by business men as a license charge rather than a business tax. Criticism is to be directed, not against the system *per se*, but against some of the bases of its assessment.

In many instances, the criterion is purely arbitrary, selected without any reference to the ability of the persons

[1] In 1888 the average state railroad privilege tax per mile was $83.33⅓, besides a county railroad privilege tax of $41.66⅔. In 1898, the state railroad privilege tax on first-class roads was only $20, and there was no county tax imposed. (Compare Auditor's Report, 1888, p. 106, with Mississippi Laws, 1898, p. 23.)

taxed. Thus, all fire, accident, and life insurance companies, which are members of any traffic association, are assessed fixed amounts; while non-traffic companies are taxed two per cent. on their gross premiums. With few exceptions, the solvent companies of the state are members of traffic associations; and because of their agreements to maintain rates, the amount of business transacted, gross earnings and other elements of their taxable capacity are utterly ignored. This is a useless display of anti-trust demagoguery.

In other instances, the criteria selected, while not arbitrary, leave room for evasion and bear no relation to earning capacity. Thus, heavily bonded cotton-seed oil mills can escape entirely the tax levied in Mississippi on the capital stock of cotton-seed oil mills. Large cotton warehouses, which pay in proportion to the size of the place in which they are located, may profit at the expense of the smaller competitors located in a larger place. On the basis of taxation according to output, lumber yards having a large output obtained at great expense, may suffer in comparison with those having a smaller output obtained at proportionately less expense. These are merely typical illustrations of some of the practical defects in the bases of privilege assessments in Mississippi.

While it would be hazardous to fix arbitrarily upon a test of taxable capacity applicable to all cases, nothing but good could result from making the bases selected more thoroughly applicable to their particular cases. If the standard cannot be made uniform, it can at least be made correct. This must be done, if the license privilege system in Mississippi is to serve to any extent as a corporation tax.

The Poll Tax

Although Mississippi is aristocratic in its economic substratum, its attitude in regard to the poll tax has always been democratic. The landowners never objected to bearing the burdens of this tax, and they used it as an instrument

to encourage slavery. This was accomplished, as we have seen, by a discrimination in the rate charged "free males of color" and white males. After the abolition of slavery and the enfranchisement of the freedmen, this discrimination was abolished and a uniform rate levied without regard to color or previous condition of servitude. The poll which during the reconstruction period, was as high as $6.00 *per capita*, is now fixed at $2.00 and is imposed on all males between the ages of twenty and sixty years.

The importance of the poll tax in Mississippi may be appreciated from the fact that it is the principal fiscal device of the school districts in the state during the four months' public school term.[1] Furthermore, the payment of the poll tax is made an implied condition of suffrage by that provision in the state constitution requiring two years' residence and the payment of all taxes during that time, as two of the necessary qualifications of an elector.[2]

No concealment need be made of the fact that the poll tax is used in Mississippi as a means of disqualifying the negro in national elections and controlling his vote in local elections. That the poll tax is more important in the state as an adjunct of suffrage than as a source of revenue is revealed by the fact that in 1897 out of a capitation of $529,694, only $250,057 was collected. Property owners are willing to pay a penalty for their ownership of property, in order to maintain white rule to protect their property. However barbarous the poll tax may be as a fiscal anachronism, social conditions in Mississippi are not yet ripe for economic reform in this direction.

Conclusion

The study of taxation in Mississippi reveals much substantial progress, many admirable features and a local genius for practical innovation. Democratic thought has been tempered by economic expediency. Thus, we can trace a

[1] Annotated Code of Mississippi, 1890, secs. 3745 and 4046.
[2] Art. 12, sec. 241.

movement away from the popular principle of the taxation of corporate property by local officials in at least two directions: (1) The property of transportation companies is assessed separately by a special board and according to well-defined rules; (2) Certain classes of corporations, of which banks and railroads are types, are taxed, not solely on their property, but on their property, together with other elements supposed to represent roughly their taxable capacity.

A well-adjusted privilege-license system has been developed, which only needs change in the bases of assessment to become an equitable corporation tax. Much has been done but much more remains to be done. Mississippi has not yet learned how "to pluck the goose—*i. e.* the people—so as to procure the greatest amount of feathers with the least amount of squawking." As contributing something to a satisfactory system of taxation in his native state, the writer submits the following constructive suggestions, based on an objective criticism of the system in vogue:—

1. A graduated tax on all incomes over $500 should supplement the state tax on the real and personal property of individuals. This would have the three-fold effect of decreasing the rate of the general property tax, of increasing revenue, and of reaching those who now escape the tax on personalty.

2. Corporate property in the state should be withdrawn entirely from the scope of the general property tax, and be made subject to a general corporation tax. This is merely a further illustration of the economic principle already partially recognized in Mississippi, that corporations should be taxed separately and on different principles from individuals.

3. The license-privilege system should be converted into a general corporation tax by enlargement and radical changes in the bases of assessment. Although no uniform principle could be applied, gross earnings and volume of business transacted would serve well as general criteria.

4. A State Board of Equalization, composed of five members from different sections of the state, should be created.

This board should be given general powers of adjusting differences of assessment as between different counties and of maintaining a uniform assessment within the same county.

5. That part of the state property tax appropriated for specific local objects—the school fund—should remain in the hands of the county collectors for disbursement; and should be reported not forwarded, as at present, to the auditor, and then prorated back.

6. The maximum and minimum fee system, now used in the remuneration of county assessors and collectors, should be abolished, and the officers should be paid fixed salaries. The salary should be large enough to secure efficiency in service.

7. There should be a tax on corporate charters levied as a percentage charge on the amount of the capital stock. At present only a license fee of $3.00 is charged for the privilege of incorporation, and this is charged without any regard to the amount of capital stock involved, or whether the corporation is organized for profit or not.[1]

[Bibliographical Note.—1. Laws of Mississippi, 1799-1898. 2. Toulmin's Digest, Natchez, 1897-8. 3. Turner's Digest, Natchez, 1815-16. 4. Poindexter's Revisal, Natchez, 1821-24. 5. Howard and Hutchinson's Digest, New Orleans, 1840. 6. Hutchinson's Code, Jackson, 1798-1848. 7. Sharkey's Code, Jackson, 1857. 8. Proceedings of Constitutional Convention, Jackson, 1861. 9. Proceedings of Constitutional Convention, Jackson, 1868. 10. Campbell's Code, Jackson, 1880. 11. Thompson, Dillard and Campbell's Code (annotated), Nashville, 1890. 12. Reports of State Auditor, 1870-98. 13. Reports of State Treasurer, 1870-98.]

[1] This tax on corporate charters is found in sixteen American commonwealths, most of which possess a corporation tax proper. (Seligman, "Essays in Taxation," p. 175.) Wherever it has been levied as a percentage charge on the amount of capital stock, it has yielded substantial revenue. The Secretary of State of Illinois, in his last annual report, makes the significant statement that, out of the proceeds of this tax of 1897 he paid the expenses of his office and handed the treasurer a balance of over $300,000. The Secretary of State of Mississippi, Col. J. L. Power, in a recent conversation with the writer, said that, "in his opinion, the salaries of all the state officers of Mississippi could be paid by the imposition of a reasonable tax on corporate charters."

V.

TAXATION IN GEORGIA[1]

By LAURENCE FREDERICK SCHMECKEBIER

Economic Characteristics

Georgia has been termed the Empire State of the South, and the variety of its soil and climate affords a certain justification for the term. From the low-lying marsh land along the coast, with its product of sea-island cotton, the country gradually rises through a rolling district in the center of the state to the wooded heights of the mountains in the west with their resources of timber and stores of mineral wealth. Among the states of the Union, Georgia is twelfth in population, fourth in the value of marble products, sixth in granite production, and twelfth in iron production. The general character of the state might be described as rural. There are nineteen cities of three thousand inhabitants and over, but of these only five have a population of more than ten thousand. Before the Civil War agriculture was almost the sole occupation. The war demoralized industrial life, but Georgia was one of the first states to recover from the effects of the great conflict. Since the war, manufactures have been slowly developing, and now the production of cotton goods in the state is considerable. In 1880 the number of spindles in Georgia was 198,656 and at the present

[1] For information received, I desire to express my obligations to Hooper Alexander, Esq., of the Atlanta bar; Hon. John D. Little, Speaker of the House of Representatives; James E. Brown, State Librarian; Forest Adair, Commissioner of Roads and Revenue, and Professor John D. McPherson, of the University of Georgia.—L. F. S.

time (1899) the number is estimated at 524,244. Outside the cities the country is rather sparsely settled, and agriculture is still by far the most important industry.

General Finances

The total receipts of the state of Georgia for the year ending September 30, 1898, were $3,121,216.55. Of this amount $2,588,783.53 or eighty-two per cent. was raised by taxation. Of the remaining $532,433.02, $420,012 was the rental of the Western and Atlantic Railroad; $56,402.22 was received from fees; $56,018.80 was derived from miscellaneous sources. The receipts are presented in detail in the following table:

Total Receipts	$3,121,216.55
By Taxation	2,588,783.53
Rental of Western and Atlantic R. R.	420,012.00
Fees	56,402.22
Miscellaneous Sources	56,018.80
Taxation:	
General Property Tax	$1,909,233.84
Poll Tax	234,431.99
Railroad Tax	215,921.76
Street Railroads	8,279.37
Insurance Companies	56,006.07
Express Companies	3,646.63
Telegraph Companies	3,558.20
Telephone Companies	6,073.32
Sleeping-car Companies	748.24
Liquor Tax	109,408.39
Insurance Agents	7,570.00
Show Tax	6,176.64
Tax on Lands	6,143.50
Tax on Futures	4,950.00
Pistol-dealer's Tax	5,269.40
Tax on Packing-houses	1,260.00
Tax on Brewing Companies	1,260.00
Tax on Sewing-machine Companies	1,600.00
Tax on Sewing-machine Agents	1,010.00
Tax on Artists	1,197.00
Tax on Auctioneers	315.00
Tax on Pawnbrokers	1,440.00
Tax on Specialists	118.80
Tax on Agents	747.00
Tax on Pedlers	2,499.40

The expenditures in detail were as follows:

Education:	
School Fund	$1,393.873.56
State University	26,657.70
State Normal School	12,500.00
School of Technology	26,875.00
North Georgia Agricultural College	6,000.00
Georgia Normal and Industrial College	23,900.00
Academy for the Blind	18,333.31
School for Deaf	34,201.38
School for Colored	4,000.00
Lunatic Asylum	289,550.73
Legislature	83,305.81
Department of Agriculture	10,000.00
Civil Establishment	127,845.83
Library Fund	3,329.88
Fertilizers' Fund	9,290.41
Geological Fund	7,149.67
Military Fund	16,314.53
Penitentiary	13,211.81
Pensions	610,120.00
Printing	16,425.28
Public Buildings	20,000.48
Public Debt	605,034.55
Insurance	8,659.89
Contingent Fund	10,903.36
Taxes refunded	3,424.17
New Code	3,505.55
Solicitor-General	3,330.00
Supreme Court Reports	4,000.00
Miscellaneous	20,520.20
Total	$3,423.488.20
Balance	$120,000.57

As regards indebtedness the finances of the state are in very good condition. The total bonded debt of the state is $8,031,500, a decrease of $2,327,840 since 1890. The debt was incurred mainly in the building of railroads and the endorsement of bonds of railroad companies. Over against this indebtedness the state owns the Western and Atlantic Railroad, which brings in a rental of $420,012, the Northeastern Railroad, and $30,700 worth of other stocks. The total interest charge is $343,880. The state pays seven per cent. on $282,500, four and a half per cent. on $5,-

399,000, four per cent. on $230,000, and three and a half on $2,120,000. The decline in the rate of interest shows that the state's credit is good.

The debt of the state in detail is as follows:

7 % bonds, due 1931	$ 282,500.00
4½% bonds, due $100,000 each year after 1898	1,800,000.00
4½% bonds, due 1912	207,000.00
4½% bonds, due 1915	3,392,000.00
4 % bonds, due 1915	230,000.00
3½% bonds, due 1915	287,000.00
3½% bonds, due $100,000 each year from 1917	1,833,000.00
Total	$8,031,500.00

Development of Taxation

Georgia was the last of the original thirteen colonies, and in many respects the most unpromising. Especially was this true in financial matters. The colony was settled mainly by debtors, and indeed the prime object of its establishment was to provide a place of refuge for those who had fallen under the severities of the English law in regard to debt. Only the perseverance of General Oglethorpe kept the colony from going to pieces, and that large hearted man was compelled to draw upon his private resources, and to pledge his individual credit for conducting the operations necessary to establish the colony. After the surrender of the charter to the Crown, public officers were paid mainly by fees, and a quit rent of nine shillings sterling for every hundred acres was exacted from the inhabitants.

Upon the separation of the colonies from the mother country, the representatives of the people were slow in imposing taxes, and financial matters gave the governor and council much concern. In July, 1783, the council sent an address to the lower house remonstrating against the smallness of the sum proposed in the tax-bill as "inadequate to the great and pressing exigencies of the State." The council urged that a tax of at least one-half dollar should be laid on every negro, mulatto, or other slave; and one-half

dollar on every town lot. The house, however, passed a bill imposing a tax of a quarter of a dollar on every hundred acres of land, a quarter of a dollar on every negro, mulatto, or slave; a quarter of a dollar on every town lot; one dollar on every free negro; and two dollars on every male inhabitant of the age of twenty-one, "who does not follow some lawful profession or mechanical trade, or who does not cultivate, or cause to be cultivated, five acres of land."

In 1796, when Oliver Wolcott made his report on the finances of the states, the same methods were still in operation. It was the characteristic system of the property tax reinforced by the poll tax which has continued to the present day. Lands were divided into districts or classes, and upon each of these a certain amount per acre was imposed as the value for taxable purposes. On such values and on all lots, wharves, and buildings a tax of forty cents per hundred was imposed. Free white male persons and slaves paid a poll tax of thirty-seven and a half cents; free negroes were taxed fifty cents; professors of law and physic, and all factors were taxed four dollars. Negroes brought by sea into the state for sale were taxed ten dollars. Stocks of shopkeepers were taxed twenty cents per hundred; foreign wares sold by factors and brokers, eighteen and three-quarter cents; and the funded debt of the United States, fifty cents per hundred.

In 1805 a tax was laid on banks, the first of its kind in the United States. Banks were taxed two and a half per cent. on their capital stock, and one-half per cent. on their circulation. In 1817 bank stock was taxed thirty-one and a quarter cents on the hundred. In 1820 the stock of the Steamboat Company of Georgia was taxed thirty-one and a quarter cents a hundred. In 1830 lottery-ticket brokers and private bankers were taxed at the same rate. In 1840 bridges, ferries and turnpikes were taxed ten cents per hundred dollars. In 1850 we find the first tax on railroads, a special act being passed for the taxation of each road. The Georgia Railroad was taxed one-half of one per cent.

on the net income of the stock of the road, and any increase of stock was taxed thirty-one and a quarter cents per hundred. The Central Railroad was taxed one-half of one per cent. on the income. The Macon and Western and the Memphis Branch Railroad were each taxed thirty-one and a quarter cents on every hundred dollars of the stock actually paid in. In the same year the poll tax was reduced to twenty-five cents, and the tax on free negroes was raised to five dollars. Carriages were also taxed from fifty cents to ten dollars according to size and number of horses required.

Present Tax System

The present tax system of Georgia is under the supervision and direction of the comptroller-general, who is elected biennially on the first Wednesday of October. Railroad, street railway, telegraph, telephone, sleeping-car and express companies, make their tax returns direct to the comptroller-general. All other property, whether owned by individuals or corporations, is returned for taxation to the "tax-receivers" in each county. Those companies which make their return direct to the comptroller-general also make payment to that officer, while those that make returns to the tax-receivers pay their taxes to the "tax-collectors" in the counties in which the returns are made. The tax rate is fixed by the governor, who is authorized by the legislature to fix a rate up to a certain limit, two years in advance. The maximum rate is always imposed.

Tax-Receivers. The tax-receiver might be called the unit official in the tax system of Georgia, as he is the official in each county who has immediate charge of the assessment of taxes and receives all returns of taxes within the time and in the manner prescribed by law. The taxpayer makes his return to the tax-receiver and the latter is required to receive the returns at any time a taxpayer applies therefor. To facilitate this process he is required to attend in each

militia district in the county at least three times during the time allowed to make returns, and he must give ten days' notice in writing of the several times and places at which he will be present for the purpose of receiving such returns. He must also keep a standing advertisement specifying the day or days when he will be at the county seat for such purpose. After he has received a return he must make a "digest" or detailed report of such return in triplicate, and forward one to the comptroller-general, one to the "ordinary," who performs the duties of a board of county commissioners,[1] and one to the tax collector. In this digest he is required to make a list of all "defaulters," or those persons who have not returned their property for taxation, and to return such property for taxation at double its true estimated value. This is known as the double tax. Furthermore the tax-receiver is required to publish the lists of all defaulters and the amount of their penalty or double tax for thirty days. Upon the basis of the digest deposited with the ordinary the tax-receiver assesses the county taxes according to law and according to the rate per cent. levied by such ordinary. The tax-receiver is under the supervision of the comptroller-general and must conform to such rules as are laid down by that official.

The tax-receivers are elected on the first Wednesday in January. This popular election of tax-receivers suggests an initial criticism of the tax system, as the receivers who

[1] Briefly summarized, the "ordinary" is normally the administrator-general for the county in decedent estates, with those ecclesiastico-judicial functions which at common law pertained to the bishop. In addition to these judicial functions, the ordinary exercises a superintendence of all county business except in so far as the same is vested in the sheriff, the clerk of court, the treasurer, the county surveyor, the tax-receiver, and the tax-collector. Over the four latter he has a large measure of superintendence and visitation, though none of them are directly responsible to him, all being elected by the people. The ordinary is the guardian and custodian of county property, fixes the tax rate, and determines in general the character and amount of county expenditures. [For the above information the writer is indebted to Mr. Hooper Alexander, of the Atlanta bar.]

are thus locally elected are less likely to be free from an inclination to make a low assessment of property than they would be if appointed by the governor or other central authority. The tax-receiver is paid a commission equal to one-half that which the collector receives for collecting the tax. He is required to give bond for one-half the amount of state tax supposed to be due from the county for the year in which he performs his duties.[1]

Tax-Collector. After being assessed by the tax-receiver, the taxes are collected by the tax-collector. This officer is elected in the same manner as the tax-receiver, is sworn and is required to give bond for thirty-three and one-third per cent. more than the state tax supposed to be due from the county in the year for which he is required to give bond. The tax-collector is supposed to supplement the work of the tax-receiver by ascertaining as far as possible all polls and professions, and all taxable property not returned to the receiver or not found in his digest. Upon all such property he collects and pays over the double tax as required by law. The collector also issues executions against all defaulters and insolvents, and places them with the proper officer for collection. The collector is required to give public notice of the time and place of his presence to collect the taxes due, and also of the days on which he will be at the courthouse. He is further required to publish his list of insolvents at the door of the courthouse for thirty days, and also to furnish the election supervisors of the county with the list of all persons who have not paid their taxes. In collecting the tax upon dealers in intoxicating liquors the collector is required to report to the comptroller-

[1] The oath of office of the tax-receiver is as follows: "I swear that I will truly and faithfully perform the duties of receiver of returns of taxable property, or of persons or things specially taxed in the county to which I am appointed, as required of me by the laws, and will not receive any return but on oath or affirmation, and will before receiving returns carefully examine each, and will to the best of my ability carry out all the requirements made upon me by the tax law. So help me God."

general the name of the person or firm paying such a tax, the amount paid and the time of payment. The tax-collectors are required to make monthly returns of all taxes collected, and to pay the money collected into the state and county treasuries, or into banks designated by the governor as state depositories.

General Property Tax

Taxable Property. As in most other American commonwealths the main source of public revenue in Georgia is the general property tax. All real and personal property, whether owned by individuals or corporations, resident or non-resident, is liable to taxation unless specially exempt. This includes all bonds, notes or other obligations for money, of persons in other states, or bonds of other states, or bonds of corporations in other states. All moneyed or stock corporations, unless exempted or differently provided for in their charters, are liable to taxation upon such capital stock as upon other property. All deeds of gift, mortgages or other assignments of property made to avoid the payment of taxes are null and void. The property is always liable for the taxes, and the taxes are a first lien before any other debt or claim. The property enumerated above was taxed in 1898 at the rate of 6.21 mills on the valuation, and the yield was $1,909,233.84.

Exemption. By the act approved December 11, 1878, the following forms of property are declared exempt from taxation: "All public property, places of religious worship and places of burial; all institutions of purely public charity; all buildings erected for and used as a college, incorporated academy or other seminary of learning; the real and personal estate of any public library, and that of any other literary association, used by or connected with such library; all books, philosophical apparatus, painting and statuary of any company or association kept in a public hall, and not held as merchandise or for other purposes of gain or sale; provided, the above-described property so exempted

be not used for purposes of private or corporate profit or income."

Assessment. A complete reassessment of property is made each year, and all property held on the first day of March must be returned for taxation at its market value. The listing system is used in the return of property. This consists simply in the distribution of printed blanks to the taxpayers, who answer under oath the questions thereon. These lists are furnished the tax-receivers by the comptroller-general, and are distributed to the taxpayers on the first of April in each year. The justices of the peace are required to furnish the tax-receiver with a list of all taxpayers in their respective districts. The following are the questions contained in the printed list:

Are you subject to poll tax?
Are you a lawyer?
Are you a doctor?
Are you a dentist?
Are you an agent or firm negotiating loans and charging therefor?
Are you the president of a railroad company?
Are you the superintendent or general agent of a railroad, express, telegraph, telephone, electric light or gas company doing business in this state, the president of which does not reside in this state?
Are you the president of an express, telephone, electric light or gas company doing business in this state?
How many hands are employed by you between the age of 12 and 65 years?
How many acres of land, except wild lands, do you own, or of how many are you the holder, either as parent, husband, trustee, executor, administrator or agent? Where is the same located by number, district and section?
What is the value thereof?
How many acres of wild land do you own or represent by number, district and section?
What is the value thereof?
What is the value of your improved city or town property, including the improvements thereon?
What is the value of your unimproved city or town property?
How many shares in the bank of which you are president and what is the value thereof?
How much capital have you in the bank of which you are president as a sinking fund or surplus fund and undivided profits, and real estate not represented in the value of your stock?

How much money or capital has the building association, or the building and loan association of which you are the president, in loans?

How much on hand?

How much property, real and personal, does the gas or electric light company of which you are president or general manager own, and what is the value thereof?

How much money on hand?

What is the gross value of your notes, accounts or other obligations for money and the market value thereof, whether solvent or partially solvent; whether the same are within or without the state?

The value of your merchandise of all kinds, including fertilizers for sale, on hand?

How many boats, vessels or watercraft of any description do you own, and the value of each?

The amount of capital invested in stocks of companies, other than such companies as are required to be returned by the president or their agents to the comptroller-general?

How much capital invested in bonds, except bonds of the United States and such bonds of this state as are exempt by law from taxation?

How much capital has the manufacturing company of which you are president or agent invested in the manufacture of woolen or cotton fabrics, including lands, and what is the value of your manufactured goods?

What is the value of raw material on hand March 1st?

What is the value of manufactured goods or articles on hand March 1st?

What amount of money, bonds, notes, accounts, choses in action of every kind did you own on March 1st? Value?

What other property of every kind did you own on March 1st? What was the value thereof?

How much capital have you invested in iron-works, foundries, and machine-shops, including machinery and lands?

How much capital have you invested in mining, including lands, and what is your surplus fund?

What is the value of your household furniture, including your tableware, or owned by wife?

What is the value of your kitchen furniture?

What is the value of your office furniture?

What is the value of your pianos, organs or other musical instruments, or owned by wife?

The value of your library, pictures, paintings and statuary, or owned by wife?

What is the value of your sewing-machines, or owned by wife?

The value of your gold watches, or owned by wife or minor children?

The value of your silver watches, or owned by wife or minor children?

The value of your watches made from material other than gold or silver?

The value of your gold and silverware?

The value of diamonds and jewelry worn by owner or wife and minor children?

The number of horses, the value of each?

The number of mules and asses, the value of each?

The number of cattle, the value of each?

The number of sheep, the value of each?

The number of goats, the value of each?

The number of hogs, the value of each?

The value of carriages, wagons and buggies?

The value of agricultural tools, implements and machinery?

The value of cotton, corn and other farm products on hand and for sale?

The value of portable saw mills, gins, engines and other machinery, or of such other machinery, stationary or otherwise, and not returned as part of realty?

What is the value of your turpentine stills and appurtenances?

What is the value of your leases or leased privileges or assets of like character?

Value of guns, pistols, bowie knives and such articles?

The value of other property not herein mentioned?

The value of property owned by the wife and minor children of the taxpayer and not returned for taxes by the owners thereof?

Whether solvent or partially solvent, give the value of your bonds, stocks of non-resident companies or corporations in this state whose capital stock is not returned by the president of such companies or corporations; all notes, accounts, judgments, mortgages, liens and other choses in action of every kind, whether such bonds, stocks, notes, etc., are held by the taxpayer in Georgia or held by some other person for him, either in or out of this state. There shall be no reduction from the value of property returned for taxes on account of any indebtedness of such taxpayer.

The following oath is also required in order to insure the correctness of the return: " I do solemnly swear that I have carefully read (or have heard read) and have duly considered the questions propounded in the foregoing tax-list, and that the value placed by me on the property returned, as shown by said list, is at the true market value thereof; and I do further swear that I returned for the purposes of being taxed thereon, every species of property that I own in my own right or have control of, either as agent, executor, administrator or otherwise; and that in making said return I have not attempted, either by transferring my

property to another or by any other means, sought to evade the laws governing taxation in this state. I further swear that in making said return I have done so by estimating the true worth and value of every species of property contained therein." All freeholders or agents are also required to make returns to the tax-receiver of all persons liable for tax residing on their premises.

Answers to these questions, accompanied by the above oath, must be returned to the tax-receiver of the county wherein the person resides before July 1. If a person fails to make a return, or fails to affix a value to his property, the receiver then makes the valuation and doubles the tax. The ordinary, however, is authorized to relieve a defaulting taxpayer if he can show from good cause that he did not have an opportunity to make the return. If the receiver finds that the return is below the full value of the property, it is his duty to assess the true value within thirty days. The taxpayer must be notified of any increase in his assessment, and if he is not satisfied, the entire valuation is left to three disinterested persons, of whom the taxpayer selects one, the receiver another and these two select a third. The valuation made by these three assessors is final. If any taxpayer has reason to think that any property is returned below its full value, he may lodge a complaint, and the receiver gives notice to the person complained of, and a new assessment is made as in the case of an appeal. If there is any property which is not returned; and the tax-receiver does not know the owner, it is his duty to tax it double and then proceed against the property for the collection of the tax.

Nominally the tax-receiver is required to submit his digest of returns of taxable property in his county to the grand jury of the superior court of that county, who are supposed to review the assessments and to correct any undervaluations they may find in the returns of the tax-receiver. This provision, however, is practically a dead letter. The returns in any one year are the guide of the

tax-receiver in the next year, and if the taxpayer returns his property at less than the year before, the valuation must be submitted to arbitration as described above. If the receiver makes a mistake in his digest it is the duty of the comptroller-general to correct such mistake by making the proper entries in the digest furnished the comptroller-general, and he must notify the ordinary and tax-collector of the county of such mistake and correction.

Defects. Such is the general property tax as it stands on the statute books. The question naturally arises whether such a formidable array of interrogations and the appended oath really secure a just and equitable return of property, or whether the experience of Georgia has been the same as that of other states using the general property tax? It may be stated in reply that the general property tax has worked but little better in Georgia than in the other states where it has been employed. In the first place the tax is inequitable as between individuals and is again inequitable as between the various counties of the state. Such can hardly fail to be the case when the property is valued by the taxpayer. Thus in 1878 cultivated lands under essentially the same conditions were valued in Bibb county at an average of $19.61 per acre, in Richmond county at $13.90, in Chatham county at $14.81, in Muscogee county at $9.18, and in Fulton county at $45.55. Furthermore, in many cases the number of acres returned is lower than the land in possession of the taxpayer. Thus in 1896 eighty-three counties of the state returned 722,205 acres of land less than they did in 1895, and at a moderate estimate this land would be worth two and a half million dollars. In 1897 the acreage of land returned for taxation was 1,177,518 acres less than the actual acreage of the state. In 1896 it was 1,275,932 less. In 1898 the return of land was 158,542 less than in 1897. By taking the highest and lowest acreage returned by each county over a period of six years, there would be shown for the state a difference of 4,885,298 acres.

The comptroller-general in his "Instructions" to the

tax-receivers for the year 1898 called attention to this as follows: "The law relative to the manner of returning lands for taxation is one thing, and the value at which you receive them is another; and while I have given you the law that relates to the former, I especially call your attention to the value at which they should be returned by the taxpayer, and that is, 'at its true and market value.' Our lands are worth a great deal more than they are being returned for taxation, and you cannot be too careful in the discharge of the duties imposed upon you in receiving their returns. . . . I find in some of the digests for 1897 large discrepancies between the number of acres returned for taxation and the number known to be actually located in the counties. In the aggregate these differences ran up several thousand acres in the state, all of which, of course, escape both state and county taxation, thereby contributing to increase the rate of taxation on the property returned and illegally exempting this unreturned property altogether."

There are again wide discrepancies between the valuation of city and town property for municipal taxation and the valuation for state taxation. The valuation of real property in the three cities of Atlanta, Augusta, and Macon on the city digest is $68,486,866, while the city and town real estate on the three county digests aggregates only $51,780,853, showing a difference of $16,706,013. In the cities the valuations are made by assessors, and are much more thorough and accurate. If city and town property were taxed on the same valuation for both state and local purposes this difficulty would be obviated. In regard to this we find the comptroller-general making the same complaint in his "Instructions for 1898," as was quoted by Prof. Ely in his "Taxation in American States and Cities," from the Instructions for 1886, indicating that the evil is one of long standing: "There is a very just complaint against the custom or practice of taxpayers returning this class of property to the receiver of tax returns, for the state and county, at a very much lower valuation than the same property is

returned to the corporate authorities for taxation. It must be manifest to every one that property is worth as much when returned for taxation to the state and county as when returned to be taxed by the cities."

Personal property of all kinds escapes its just share of taxation. All the watches, rings, diamonds, precious stones, plate, etc., in Fulton county, containing the city of Atlanta with a population of over sixty-five thousand, was valued at $108,083 in 1898. As regards merchandise the returns are far worse. In 1896 Tatnall county returned only $500 of merchandise, while Campbell county returned nothing at all, and Worth county returned nothing in 1895. Fulton county, containing the city of Atlanta, the largest distributing center between Baltimore and New Orleans, returned merchandise to the amount of only $3,171,170 in 1898. In Macon a single fire destroyed goods upon which insurance was paid equal to almost a third of the entire amount the city returned for taxation. The fluctuations in the value of merchandise are also startling. Berrien county dropped from $118,690 in 1896 to $415 in 1897, and rose to $125,093 in 1898. Campbell county rose from nothing in 1896 to $40,136 in 1897, while Taliaferro county rose from $1,150 in 1896 to $14,250 in 1897.

As to intangible property such as stocks, bonds, notes, mortgages, etc., the comptroller-general in his "Instructions" for 1898, says: "This class of property, except in isolated cases, is seldom ever returned by the owners thereof for taxation. It has become a very considerable item of the wealth of the state, but has not been returned for taxation." In regard to merchandise, the same officer adds: "From a careful examination of the digests on file in this office, it is evident that such property is not returned as it should be, the aggregate value of such property for the year 1897 being only about seventeen million dollars. This is far below the market value of this property, and I invite your special attention to the returns of this class of property when it is being given in to you this year. I know

that large stocks of commercial fertilizers are being carried in this state from year to year, and I am satisfied that very little of it is ever returned for taxation." As to household property the complaint is as follows: "Perhaps no class of property is so undervalued by the owners when returning it for taxation as household furniture, from the fact, no doubt, that it is regarded as unproductive and therefore should not be valued at its *full market* value. *I am quite sure that a very large percentage of the watches, jewelry, pianos, organs, etc., owned in our state are not returned at anything like their market value, if returned at all.*" That these are standing complaints is evidenced by the fact that almost the same "Instructions" were issued in 1886.

Another criticism of the general property tax in Georgia is the double taxation involved in taxing land at its full value, without allowance for indebtedness, and then taxing the evidence of such indebtedness. It is clear that if the burden of taxation is to be apportioned according to ability, the man with a mortgage or other debt of half the value of his property is not able to pay as much as where the land is unencumbered. The comptroller-general, in his "Instructions" for 1898, called especial attention to the fact that such indebtedness should be taxed: "In purchasing lands on a credit, it is the custom for the purchaser to give to the party from whom purchased notes representing the amount to be paid at the time or times agreed upon by the parties selling and buying; the party selling and taking such notes secures himself by retaining deeds to said lands, and giving parties buying a bond, in which they agree to make titles when purchase money is paid. Those holding such notes must return them to you for taxation, and the party purchasing must return the lands so purchased." The law should be amended so as to make an allowance for indebtedness.

Now if the operation of the general property tax in Georgia has been thus defective, what causes are responsible? Most of the writers on taxation will declare that

the general property tax is inherently bad. The two marked defects of the tax are said to be (1) its lack of universality, that is, the escape of personal property from taxation, and (2) its incentive to dishonesty, in that people make false returns in order to secure a low assessment. But criticism should be positive as well as negative, and a substitute should be offered for that which is condemned. The corporation tax, which is well adapted to the wealthy commonwealths of the north, cannot be applied to the commonwealths of the south where manufacturing is very little developed, and where the country is largely agricultural. The single tax on land can not be justified by an appeal to ethics or to the science of finance. We have left the income tax. Without going into the political and social aspects of the income tax it is hard to see how it can be any more successful than the general property tax. If personal property escapes taxation with such a list of questions under oath as is required in Georgia, and if the number of acres of land is misrepresented, will the great mass of intangible personal property be reached any better by an income tax? As to the charge of being an incentive to dishonesty, the same is true of the income tax and of any other tax where returns are required under oath by the taxpayer. The general property tax, as far as real property is concerned, has the advantage of something tangible to seize upon, and with a properly drawn corporation tax a great deal of the personalty will be reached.

The unsatisfactory results of the general property tax in Georgia are not due so much to inherent defects in the tax as to lack of vigor and to defects in administration. In the first place it is essentially wrong that the tax-receiver should be an elective official, and elected for such a short term as two years. The tax-receiver is naturally anxious for another term of office, as he regards his position as a stepping-stone to another one, and he naturally endeavors to conciliate his constituent by making the burden of taxation as light as possible. It would be contrary to human nature

to expect anything else. An official or a board appointed by the governor or some central authority would be much less open to such influence. Furthermore, an official so appointed would be more attentive to the instructions of the comptroller-general. As the matter stands now the assessment of property by the receivers is a merely *pro-forma* proceeding. The blanks are sent to the taxpayer to be filled in, but the questions provided by the statute are answered in a rambling manner, or they are disregarded altogether and the taxpayer is allowed to lump his estimate under one or two heads.

The omission to answer the questions and the failure of the tax-receiver to require this are so common that they excite no comment, and are taken as a matter of course. Even when the list is filled out, the valuations given are usually those of the year before, and the tax-receiver accepts them without question and does not endeavor to scrutinize them in any way. The taxpayers generally sign the appended oath, but it is never administered as is required by the statute. That the assessment is usually low is shown by the fact that the provision for arbitration in regard to assessment is seldom, if ever, resorted to, and a well-informed correspondent writes me that he has heard of but one instance where the valuation was referred to arbitration. This in itself shows that the valuation is so low that the taxpayer never feels justified in taking an appeal. The provision for the correction of valuations by the grand jury is also never carried out, but is practically a dead letter.

In view of these facts it is not to be wondered at that the law has not given satisfaction. The only matter of surprise is that it has worked as well as it has. No law, no matter how good, will give satisfaction unless it is properly administered. The present list of questions falls by its own weight; it is too awkward and cumbersome. The tax-receivers do not do their duty properly, and the comptroller-general does not seem to be able to force them to it, al-

though he has emphasized it from year to year in almost the same words. The following is from his "Instructions" for 1898:

"See to it, then, that *every* requirement of the law is met in taking the returns of every class of property and from every class of citizens. Many complaints are made to this office by taxpayers of the loose and careless manner of tax-receivers in taking returns. In many instances they charge that the receivers never propound the questions to taxpayers required by law, nor require them to fill out the blank tax list and make oath to the correctness of their return. *This is a violation of law that will not be permitted in future by this office.*" And further: "In order to have a full and fair return of the taxable property, it is absolutely necessary for you to ask each party making the return the questions which I have arranged for you, to be found in these instructions and the tax lists sent with the digests. Such questions I am compelled by law to give you, and they are given for no idle purpose, but are designed to bring out and exhibit the taxable property of the state in the possession of the owners thereof."[1]

The tax-receivers should be appointed by the governor or by an appointing board, which should also have the power of removal. This would enable the comptroller-general to exert greater pressure on the tax-receivers and hold them to a stricter accountability. The assessment of property should also be made by a board of, say three assessors, who should value the property direct or make a strict revision of the returns of the taxpayers, as it is manifestly unfair to allow each person to make his own valuation. Finally, taxation for state purposes in cities

[1] By the act approved December 22, 1898, it is made a misdemeanor for the tax-receiver to neglect to administer the oath, and in addition to the penalty provided in the code for misdemeanors, the offender is fined ten dollars, one-half to go to the informer. It remains to be seen whether this will stimulate the administration of the oath.

and towns should be assessed upon the same valuation as for local purposes.

Capitation Taxes

Poll Tax. Capitation taxes yield the second largest amount derived from taxation. Every male inhabitant of the state, between the ages of twenty-one and sixty years, is subject to a poll tax of one dollar per annum. Blind persons, cripples, and maimed and disabled Confederate soldiers are exempt from this tax. No city or county, or any other corporate authority is allowed to assess or collect any capitation tax whatever, except a street tax, and that after an opportunity is given to work upon the streets. The payment of the poll tax is requisite for the exercise of the suffrage, and this is a source of political demoralization. The negro especially refrains from paying his poll tax, and waits for the politician to pay it for him, which is ordinarily done. There is no way of enforcing the collection of the tax from persons who do not own property, except as a qualification for voting and thus the tax always tends to fall on those who already own property. Furthermore the constitution of the state requires that a voter shall have paid all taxes required of him since 1877. Thus payment for the current year is not sufficient to qualify, but the voter must pay all taxes in arrears. There is a large class of citizens who sometimes pay and sometimes do not, and when they do pay they do so merely for the purpose of voting. But before they can do this they must register and swear that they have paid all taxes since 1877, and hence the tax is a constant incentive to perjury. The pernicious effect of such a system hardly needs any comment. About sixty per cent. of the tax is generally collected. The census of 1890 showed a voting population of 398,122 and the yield in 1898 was $234,431.99. The proceeds are used "for educational purposes in instructing children in the elementary branches of an English education only."

Professional Tax.[1] Every practitioner of law, medicine, or dentistry, presidents of each of the banks of the state, the president of each of the railroad, express, telegraph, telephone, electric light and gas companies doing business in the state, and every architect, and civil, mechanical and electrical engineer is taxed ten dollars per annum. In case the president of any of the companies named does not reside in the state, the superintendent or general agent of such company must pay the tax. No municipal corporation is allowed to levy any additional tax on these professions, but the payment of the tax is prerequisite to practice. This, however, does not insure its payment, and probably not over twenty-five per cent. is paid. The returns for this tax are included in the general property tax.

Corporation Taxes

There is no special law for the taxation of corporations, except those corporations which enjoy specific franchise privileges. Manufacturing and other incorporated companies (except railroad, insurance, telegraph, telephone, express, and sleeping- and palace-car companies) are taxed in the same manner as individuals on the value of their real and personal property, and must return their property for taxation in the county in which the company is located, or where the principal business is carried on. The return must be made under oath by the president or agent of the corporation. In addition to the questions given above the president or agent is also required to answer the following:

What is the nominal value or cost of the real estate of the company you represent, including the buildings thereon?

Second. What is the fair market value thereof?

Third. What is the nominal value or cost of your machinery of every kind?

Fourth. What is the fair market value thereof?

Fifth. What is the value of the real estate not used in the conduct of the business of your company?

---

[1] A rigid classification would perhaps include this charge under License Taxes rather than under Capitation Taxes.

Sixth. What is the value of raw material on hand on the day fixed for the return of property for taxation?

Seventh. What is the value of the manufactured goods or articles on hand on the day fixed for the return of property for taxation, whether at your principal office or in the hands of agents, commission merchants or others?

Eighth. How much money did your company have on hand on the day fixed for the return of property for taxation, whether within or without the state? How much deposited in bank?

Ninth. State separately the gross nominal value of the notes, accounts, bonds and other obligations for money or property of every kind on hand on the day fixed for the return of property for taxation. State separately the fair market value of each of said classes of property.

Tenth. What other property of every kind did your company own on the day fixed for the return of property for taxation, and what was the fair market value thereof?

The comptroller-general is also empowered to propound any other questions which might secure a fuller return.

Banks and Building Associations. The capital stock of banks is not taxed, but the shares of the stockholders are taxed at their market value in the county where the bank is located at the same rate as real and personal property. The banks are also taxed on their real estate unless the value of the same is represented in the market value of the shares of stock. The undivided profits and surplus are also taxed when these are not included in the value of the stock and buildings.

The tax on general corporations works about as well as does the general property tax on individuals, and in fact corporations are taxed the same as individuals when they should be taxed in an entirely different manner. The sphere of a corporation is in most instances specifically different from that of an individual. The business of a corporation is likely to be scattered over the state and in this fiscal system the entire proceeds of the tax go to the county in which the main offices of the company are located. To reform the tax on corporations and put it on a modern basis the following changes are necessary: In the first place the taxation of corporations should be separated from

the taxation of individuals. Secondly, corporations, like individuals, should be taxed for local purposes on their real estate only, and the real estate should be taxed in the county in which it is located. Under the present system a corporation may have large holdings of property in one county and another county may reap all the benefit. This is obviously unfair and should be remedied. Thirdly, corporations should be taxed for state purposes on their earnings or on their capital and debt, and when this is done only so much of the total earnings or capital should be taxed as is actually received or employed within the state.

Building associations are also taxed upon the market value of their shares of stock on which no advance has been made, at the same rate as other property. This tax is in lieu of all other taxes and license whether state, county or municipal, except a business license by the town or city in which the principal office of the association is located. The returns for these taxes are all included in the returns of the general property tax.

Railroads. Railroads, like other corporations, are taxed on the value of their property at the same rate as other property of the people of the state. The president of the company is required to return to the comptroller-general, under oath, the amount of the property of the railroad, without deducting indebtedness, and the president of the company is then required to pay the tax so assessed to the comptroller-general. Railroad companies operating railroads lying partly in the state and partly in other states, are taxed as to the rolling stock and personal property appurtenant thereto, and which is not permanently located in any of the states through which the road passes, on so much of the whole value of the rolling stock and personal property as is proportional to the length of the railroad in the state, without regard to the head office of the company. If the comptroller-general is not satisfied with the return, and he makes a new assessment not satisfactory to the person making the return, two arbitrators are chosen, one

by the comptroller-general and the other by the officer objecting to the assessment. If these two fail to select an umpire within thirty days, the governor appoints one, and the award of these three arbitrators is final. Street railroads are assessed in the same manner. The receipts from railroads in 1898 were $215,921.76, and from street railroads $8,279.37.

That no deduction should be allowed for indebtedness is eminently proper, as the bonded debt of a railroad is often really a part of its capital stock. But the general property tax is even less applicable to the railroad than to the general corporation. Here again the best form of taxation is that on net earnings, *i. e.* the total annual revenue from all sources minus all actual expenditures except interest and taxes. As noted above, the interest on bonds should not be deducted from the gross receipts as the funded debt really represents earning capacity.

Insurance Companies. All foreign and home insurance companies are taxed one per cent. on all premiums received by them; but mutual, co-operative or assessment fire insurance companies, organized for mutual protection against fire, and receiving no premium other than the assessment of its own members, are not so taxed. If any insurance company does a brokerage business it is taxed upon the capital so employed the same as other moneyed capital is taxed in the hands of private individuals. The returns of insurance companies must be sworn to by the president of the company and forwarded to the comptroller-general on or before the first day of July in each year. The returns embrace the period from May 1 to April 30. The name and address of each agent must be given, the aggregate amount of risks written during the year; the amount of premiums received; and the losses paid and unpaid by agencies. The returns must be itemized and the comptroller-general has power to correct them within sixty days. If this be done the officer making the return has the privilege within twenty days of referring the question at issue

to two arbitrators, who choose an umpire in case of disagreement, and their award is final. In case the company fails to make a proper return, the comptroller-general makes the assessment from the best information he can secure. All home and foreign fidelity and guarantee companies, and other companies furnishing bonds are taxed at the same rate and in the same manner as insurance companies. The returns are included in those of insurance companies. In 1898 the revenue from this source was $56,006.07.

Express and Telegraph Companies. All persons or companies, including railroad companies, doing an express and telegraph business and charging the public, are taxed two and one-half per cent. on their gross receipts. The superintendent or general agent of each telegraph or express company, or the president of each railroad company doing such a business in the state is required to make a quarterly return, under oath, to the comptroller-general on the last day of March, June, September, and December in each year, showing the full amount of gross receipts during the quarter ending on that date. The tax is also to be paid at the same time as making the returns. If any officer, whose duty it is to make such returns, fails to do so within thirty days of the required time, such person may be indicted for a misdemeanor, and punished by fine and imprisonment in the discretion of the court. In 1898 the tax received from express companies was $3646.63, and that received from telegraph companies was $3558.20.

Telephone Companies. Every telephone company or individual operating telephones is required to pay a tax of one dollar a year for each telephone station or box, rented or used by subscribers. The superintendent or general manager is required to make returns under oath, and to make payments to the comptroller-general on the same dates as the officers of express and telegraph companies. In 1898 the revenue from this source was $6073.32.

Sleeping-Car Companies. Sleeping-car companies are

taxed at the regular tax rate imposed upon other property in the state of Georgia in the same proportion to the entire value of such sleeping cars that the length of lines in the state bears to the length of lines of all railroads over which the sleeping cars are run. The returns are made to the comptroller-general by the president or person in control of the sleeping cars in the state. The comptroller-general may frame such questions as will elicit the information sought, and the answers to these questions must be made under oath. If the officers fail or refuse to answer the questions addressed to them, the comptroller-general obtains the information from such sources as he may, and he then assesses a double tax on such sleeping cars. If the taxes are not paid the comptroller-general issues execution against the owners of such cars, which execution may be levied by the sheriff of any county of the state upon the sleeping cars of the owner who has failed to pay the required taxes. In 1898 the yield from this source was $748.24.

License Taxes

Georgia, like most other southern states, imposes a license tax on a number of occupations. These are generally specific in amount, and are laid both for revenue purposes and as an aid to police regulation. License taxes have been imposed in the state ever since its earliest day and will probably long continue as an auxiliary to more important taxes.

Liquor License. All dealers in spirituous or malt liquors, intoxicating bitters or brandy fruits or domestic wines, are taxed two hundred dollars for each place of business in the county where the same are sold. The tax does not relieve the dealers from any local or prohibitory law, and it does not apply to domestic wines manufactured from grapes or berries purchased by or grown on lands owned, leased or rented by the dealer. All liquor dealers must register their names before the ordinary of the county in

which they propose to sell spirituous or malt liquors. The ordinary then notifies the comptroller-general and the collector of taxes for the county. When the person or firm registers it is required to pay the tax imposed by the General Assembly for that year. To fail to register is a misdemeanor punishable by fine or imprisonment. The proceeds of the tax are used for educational purposes, and in 1898, when the tax was one hundred and fifty dollars, they amounted to $109,408.39.

Insurance Agents. Every local insurance agent or broker doing business in the state is taxed ten dollars for each county in which he may solicit business. Every traveling or special or general agent of life, fire, accident, or other insurance company doing business in the state, is taxed fifty dollars, and the tax must be paid before the agents are allowed to act for their respective companies. This tax is not required of the agents of assessment life insurance companies or mutual aid societies, nor of railroad ticket agents selling accident insurance policies, nor of agents of industrial life insurance companies writing industrial life insurance, the premiums of which are payable in weekly instalments not exceeding $1.05 per week. For such agents as are required to pay the tax, the receipt of the comptroller-general, together with his certificate, constitutes their license to transact business for their companies. In 1898 this tax yielded $7570.

Show Tax. Circus companies, in or near cities of twenty thousand inhabitants or more, pay a license tax of one thousand dollars; in or near cities or towns of five thousand inhabitants and under twenty thousand, four hundred dollars; in cities or towns of four thousand inhabitants and under five thousand, three hundred dollars; and in cities or towns of less than four thousand inhabitants, two hundred dollars for each day they exhibit. All dog or horse shows and shows of like character, beneath a tent, canvas or enclosure, charging an admission fee of more than twenty-five cents, pay a tax of thirty dollars for each day they exhibit,

and those charging less than twenty-five cents pay a tax of ten dollars for each day they exhibit. All shows and exhibitions (except such as are histrionic, musical, operatic, and elocutionary) including the side shows accompanying circuses, pay fifty dollars in every city or town of five thousand inhabitants; forty dollars in cities or towns of four thousand inhabitants and less than five thousand; and thirty dollars in towns of less than four thousand inhabitants. The receipts go for educational purposes, and in 1898, when the tax was somewhat lower, amounted to $6176.64.

Tax on Games. Every person or firm who keeps or holds for hire or sale any billiard, pool, or other table of like character, is taxed one hundred dollars for each county in the state in which such person or firm does business. Every keeper of a pool, billiard or bagatelle table kept for public use is taxed twenty-five dollars for each table. Every keeper of any other place for the performance of any game or play, and the keeper of any flying-horses is taxed twenty-five dollars in each county. Every keeper of a ten-pin alley or shooting gallery, kept for public pay, is taxed twenty-five dollars for each place of business. In 1898 the receipts from these taxes were $6143.50.

Pistol Tax. A tax of twenty-five dollars is imposed on all dealers in pistols, toy pistols, shooting cartridges, pistol or rifle cartridges, dirks, bowie-knives, or metal knucks, for each place of business in the county where the same are sold. In 1898 this tax yielded $5269.40.

Tax on Futures. Every individual, firm, or agent engaged in the business of buying and selling farm products, etc., not intended for *bona fide* sale and delivery, but for future delivery (commonly called futures) is taxed one thousand dollars per annum in each county in which said business is carried on. In 1898 this tax yielded $4950.

Packing-houses and Brewing Companies. Packing-houses are taxed one hundred dollars in each county where the business is carried on. In 1898 this tax yielded $1260. Brewing companies are taxed three hundred dollars, and

all others who are engaged in the sale of beer, and do not pay the tax as liquor dealer described above are taxed three hundred dollars for each place of business in each county in which they carry on business. In 1898 this tax yielded $1260.

Bicycle and Sewing-Machine Companies. Every sewing-machine company, and all wholesale and retail dealers in sewing machines selling machines manufactured by companies that do not pay this tax, are required to pay two hundred dollars for the fiscal year or fraction thereof. Wholesale and retail dealers are required to pay the tax for each brand of sewing machines sold by them, unless the manufacturer of such a machine has paid the tax. Furthermore, sewing-machine companies are also taxed twenty-five dollars a year for each agent in every county in which he may do business. Bicycle manufacturers, and all wholesale and retail dealers selling bicycles manufactured by companies that have not paid this tax, are required to pay a tax of one hundred dollars for the fiscal year or fractional part thereof. Before beginning business both sewing-machine and bicycle manufacturers are required to register their names with the ordinary of the county in which they do business and exhibit their license from the comptroller-general. A failure to comply with these provisions is a misdemeanor punishable by fine or imprisonment. In 1898 the tax on sewing-machine companies yielded $1600, and that on the agents of the companies $1010. The tax on bicycle manufacturers is imposed for the first time in 1899.

Miscellaneous License Taxes. Every daguerran, ambrotype, photographic or similar artist is taxed ten dollars, and the tax is required of them in only one county. Every person carrying on the business of auctioneer is taxed twenty-five dollars for each county in which he carries on business. Pawnbrokers are taxed fifty dollars for each place of business. All itinerant doctors, dentists, opticians, or specialists doing business in the state are taxed ten dollars for each county in which they may do business.

Itinerant lightning rod agents are taxed fifty dollars for each county in which they may do business, but this tax is not required of any indigent or disabled Confederate soldier. Dealers in cigarettes are taxed five dollars for each place of business. Every proprietor or owner of any park where baseball or any similar game is played and where admission fees are charged is taxed fifty dollars for each place, but in places of less than ten thousand inhabitants twenty-five dollars is paid. Emigrant agents, or the employer or employee of such agents, are taxed five hundred dollars for each county in which the business is carried on. This is a prohibitory tax, as there is no return for it in the report of the comptroller-general. Every agent of a matrimonial, natal, or nuptial company is taxed one hundred dollars for each county in which he may do business. Railroad-ticket brokers are taxed fifty dollars for each place of business. All mercantile and collection agencies, and commercial agencies are taxed fifty dollars in each county where they have established an office. Firms and agents negotiating loans and charging therefor are taxed ten dollars for each county in which they carry on business. Each person or firm engaged in making abstracts in cities or towns of twenty thousand inhabitants or over is taxed twenty-five dollars; in cities or towns of ten thousand inhabitants and less than twenty thousand the tax is ten dollars; and in cities and towns of less than ten thousand inhabitants the tax is five dollars. But this tax is not required of lawyers who have paid the professional tax required of them. Detective agencies are taxed fifty dollars for each place where they have an office. Pedlers of agricultural implements who have not a fixed place of business are taxed twenty-five dollars for each county. Clock pedlers are taxed one hundred dollars in each county in which they do business. Traveling vendors using boats for the purpose of selling goods on the waters of the state are taxed fifty dollars for each county in which they sell their wares. This tax is a lien on the boat and its contents with-

out regard to ownership. Every vendor of patent or proprietary medicines, special nostrums, jewelry, paper, soap or other medicines is taxed fifty dollars in each county in which he offers such articles for sale. Pedlers of stoves or ranges are taxed two hundred dollars for each county in which they do business. Traveling vendors of patent churns and patent fences, and the patent rights of the same are taxed ten dollars in each county in which they offer such articles for sale. Each company of traders or fortune tellers, usually known as "gypsies," are taxed twenty-five dollars in each county in which they carry on business. In 1898 the receipts from the most important of these taxes were as follows: artists, $1197; auctioneers, $315; pawnbrokers, $1440; specialists, $118.80; agents $747; pedlers, $2499.40.

Conclusion

The general property tax must continue for many years to be the main resource in the tax system of the state of Georgia. The reforms necessary to the better operation of that tax have been indicated above, but it might be better to summarize all such suggestions in this place: The official assessing taxes should not be elected, but should be appointed by the governor or other central authority; the listing system should be carried out in the spirit of the law or it should be abolished altogether; the administration should be centralized, and the *personnel* of the staff should be rigidly examined. Where officials do not carry out the orders of their superiors it is impossible to make any system work properly. In regard to the tax on corporations the following reforms are recommended: The taxation of corporations should be separate and distinct from that of individuals; corporations should be taxed for local purposes on their real estate only, and for state purposes on their earnings or on their capital stock and debt. If it is financially possible the poll tax should be abolished, as it is antiquated and acts as an incentive to fraud and perjury. In

regard to new taxes the most desirable that can be recommended is that of a tax on inheritances, and also a tax on the commissions of executors and administrators. The simplicity of these taxes and the utter impossibility of evasion makes them the most desirable of taxes. A bonus on charters and franchises might also add an appreciable sum to the year's receipts.

It was confidently expected that the last legislature (1898) would make material changes in the revenue laws, but with the exception of imposing a few additional license taxes and increasing the amount of others, the legislature did nothing. A proposition to tax all dogs over six months old at one dollar a head caused a hot debate in the House of Delegates. It was claimed that this tax would put $250,000 in the state treasury, but one of the speakers predicted that if the bill passed, "the next gale that sweeps the deck of the grand old ship of the state of Georgia will waft to our ears the wail of the statesmen out of a job." In the face of such a dire prophecy the bill failed for want of a constitutional majority.

The tax rate in the state of Georgia has risen steadily from 2½ mills in 1883 to 6.21 mills in 1898, and at present the state is confronted by the prospect of a deficit. During the period mentioned above the taxable basis has increased from $306,921,355 to $411,813,911 or about one-third, while the tax rate has almost tripled. When the tax rate increases in inverse proportion to the taxable basis there is a certainty that a reform of the fiscal machinery is necessary. A primary difficulty is the lavish attitude of the legislature with respect to appropriations. An exceptionally well-informed observer makes the following statement concerning the pending financial difficulties: "Shallow and flippant talkers ascribe this to the unascertained class of people known as tax-dodgers. I am satisfied that if all the tax-dodgers were made to pay up their full share there would be no deficit, but I do not think the tax-dodger is the cause of the difficulty so much as the fact that the legislators . . . have

appropriated money without the wherewithal to pay. The state seems at present to be divided into two factions. One thinks that the remedy is to cut down appropriations, the other thinks that the remedy is to catch the dodger. The truth is that the dodging has gone on all the time as much as now. It has no reference to the present trouble. The present trouble will have to be secured by economy in expenditures. The catching of the tax-dodger and equalizing of tax burden is something that it likewise needs."

With a careful limitation of expenditures, and the reforms indicated above, and a strict enforcement of the laws that are provided, the state ought to obtain sufficient revenue to meet all its expenses without a crushing burden of taxation. Nothing is more demoralizing and pernicious than the non-enforcement of the laws that stand on the statute books.

[Bibliographical Note.—1. Cobb, Georgia Digest, Athens, 1851. 2. Georgia Code, Atlanta, 1895. 3. Stevens, History of Georgia, New York and Philadelphia, 1847, 1859. 4. Jones, History of Georgia, Boston, 1883. 5. Comptroller-General's Report, Atlanta, 1898. 6. Instructions of the Comptroller-General to the tax-receivers of Georgia, Atlanta, 1898. 7. Public Acts of the General Assembly of the State of Georgia for 1896, 1897, 1898, Atlanta, 1899. 8. Wolcott, Report on Finance, American State Papers, Vol. V, Washington, 1832. 9. R. T. Nesbitt, Georgia a Fair Field for Home-seekers and Investors, Atlanta, 1895.]

INDEX

Adair, F., acknowledgments to, 217.
Adams, F. G., acknowledgments to, 115.
Administrators and executors, taxation of commissions in Maryland, 62-63.
Alexander, H., acknowledgments to, 217.
Assessment of taxes, in Georgia, 226-230.
in Kansas, 143-148.
in Maryland, 34-37.
in Mississippi, 198-199.
in North Carolina, 88-90.
Ayer, H. W., acknowledgments to, 77.

Barksdale, ——, cited on reconstruction in Mississippi, 192.
Bassett, J. S., acknowledgments to, 77.
Bell, Helen D., acknowledgments to, 177.
Brown, J. E., acknowledgments to, 217.

Clement, H., acknowledgments to, 77.
Collection of taxes in North Carolina, 89-90.
in Mississippi, 200-201.
in Kansas, 148-149.
in Georgia, 224-225.
Commissions, tax on officials, in Maryland, 64.
Corporation taxes in Georgia, 238-243.
in Kansas, 161-163.
in Maryland, 51-61.
in North Carolina, 97-101.

Debt of Georgia, 219-220.
of Kansas, 120-121.
Debt of Maryland, 22-26.
of Mississippi, 183.
of North Carolina, 82n.

Economic characteristics of Georgia, 217-218.
of Kansas, 115-118.
of Maryland, 13-16.
of Mississippi, 177-179.
of North Carolina, 77-79.
Ely, R. T., cited on use of term "transitional period," 188.
quoted on general property tax in Georgia, 231.
Executors and administrators, taxation of commission, in Maryland, 62-63.
Express companies, taxation of, in Georgia, 242.

Fees, excess of, in Maryland, 63.
Finances of Georgia, 218-220.
of Kansas, 118-122.
of Maryland, 16-26.
of Mississippi, 179-183.
of North Carolina, 79-82.
Fund system in Kansas, 141-142.
in Maryland, 16-17.

General property tax in Georgia, 225-237.
in Kansas, 140-160.
in Maryland, 30-45.
in Mississippi, 196-206.
in North Carolina, 86-92.
Georgia, corporation taxes in, 238-243.
economic characteristics of, 217-218.
finances of, 218-220.
general property tax in, 225-237.
history of taxation in, 220-222.

Georgia, license taxes in, 243-248.
poll tax in, 237-238.
reforms suggested in, 248-250.
Graham, R. P., acknowledgments to, 13.

History of taxation, in Georgia, 220-222.
in Kansas, 123-139.
in Maryland, 26-30.
in Mississippi, 184-195.
in North Carolina, 82-86.
Holloway, J. N., cited immigration into Kansas, 123.

Income tax in North Carolina, 105-108.
Inheritance tax in Maryland, 61-62.
in North Carolina, 108-111.
Insurance companies, taxation of, in Georgia, 241-242.
in Kansas, 162.
in Maryland, 57.

Kansas, corporation tax in, 161-163.
economic characteristics of, 115-118.
finances of, 118-122.
general property tax in, 140-160.
history of taxation in, 123-139.
license taxes in, 163-165.
poll tax in, 165-166.
reforms suggested in, 166-174.
road tax in, 166.
school taxation in, 174-176.
King, J. L., acknowledgments to, 115.

License taxes in Georgia, 243-248.
in Kansas, 163-165.
in Maryland, 45-51.
in Mississippi, 206-212.
in North Carolina, 92-97.
Little, J. D., acknowledgments to, 217.
Local and state taxation in Kansas, relations of, 139-140.

Lowry and McCardle, cited on territorial taxation in Mississippi, 184.
cited on reconstruction in Mississippi, 192.

Maryland, corporation taxes in, 51-61.
economic characteristics of, 13-16.
finances of, 16-26.
general property tax in, 30-45.
history of taxation in, 26-30.
inheritance tax in, 61-62.
license taxes in, 45-51.
miscellaneous taxes in, 62-65.
reform suggested in tax system of, 65-75.
May, A. Q., acknowledgments to, 177.
McCardle and Lowry, cited on reconstruction in Mississippi, 192.
cited on territorial taxation in Mississippi, 184.
McPherson, J. D., acknowledgments to, 217.
Medcalf, J. A. J., acknowledgments to, 13.
Mississippi, economic characteristics of, 177-179.
finances of, 179-183.
general property tax in, 196-206.
history of taxation in, 184-195.
license taxes in, 206-212.
poll tax in, 212-213.
reforms suggested in, 213-215.
Mortgage tax in Maryland, 64-65.

Noble, cited on inheritance tax in Iowa, 172.
North Carolina, corporation taxes in, 97-101.
economic characteristics of, 77-79.
finances of, 79-82.
income tax in, 105-108.
inheritance tax in, 108-111.
general property tax in, 86-92.
history of taxation in, 82-86.
license taxes in, 92-97.

North Carolina, poll tax in, 101-105.
reforms suggested in, 111-114.

Poll tax in Georgia, 237-238.
in Kansas, 165-166.
in Mississippi,, 212-213.
in North Carolina, 101-105.
Power, J. L., acknowledgments to, 177.

Railroads, taxation of, in Georgia, 240-241.
assessment of, in Kansas, 146-147.
taxation of, in Maryland, 52-57.
taxation of, in Mississippi, 200.
Reforms suggested in Georgia, 248-250.
in Kansas, 166-174.
in Maryland, 65-75.
Reforms suggested in Mississippi, 213-215.
in North Carolina, 111-114.
Road tax in Kansas, 166.

School taxation in Kansas, 174-176.
Seligman, E. R. A., cited on inheritance tax in Missouri, 172.
State and local taxation in Kansas, relations of, 139-140.

Telegraph companies, assessment of, in Kansas, 147-148.
Telephone companies, assessment of, in Kansas, 147-148.

West, M., quoted on inheritance tax, 110-111.
Worth, W. H., acknowledgments to, 77.

The Colonial Executive Prior to the Restoration.

SERIES XVIII NOS. 5-6

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE
HERBERT B. ADAMS, Editor

History is past Politics and Politics are present History.—*Freeman*

The Colonial Executive Prior to the Restoration

BY
PERCY LEWIS KAYE, Ph.D.
Instructor in History, University of Iowa

THE JOHNS HOPKINS PRESS, BALTIMORE
PUBLISHED MONTHLY
MAY - JUNE, 1900

COPYRIGHT, 1900, BY N. MURRAY.

WILLIAMS & WILKINS COMPANY
BALTIMORE

PREFACE.

In studying the history of the colonial executive during the period with which this article deals, I have found it necessary to approach the subject from three points of view. In the first place, the various documents, such as charters, commissions and letters of instruction to the governors, have been considered in order to determine the scope and character of the power conferred on the executive officers in the several colonies, the means by which they were limited in the use of the executive prerogative, and the instruments at hand with which to enforce their commands. In other words, executive powers in the various colonies are studied comparatively. Second, the connection between the executive in the colonies and the mother country is examined to see by what means the English administration was carried out; and, finally, the executive is discussed in its relation to the popular assemblies and legislatures as they rose to prominence. It is believed that only by this threefold consideration can the real position of the executive be understood.

I take this opportunity of extending my sincere thanks to all those whose kind assistance, by advice or suggestions, has so materially aided me in the preparation of this paper.

P. L. K.

CONTENTS.

I. The Origin and Character of the Early Colonial Governments 7

II. The Constitution and Powers of the Executive:

Virginia 13

Massachusetts 28

Rhode Island 38

Connecticut 40

Maryland 44

III. English Administration of the Colonies 53

IV. The Relations of the Executive to the Legislative Assemblies 63

Summary 81

Appendix—List of Colonial Governors 83

The Colonial Executive Prior to the Restoration.

CHAPTER I.

THE ORIGIN AND CHARACTER OF THE EARLY COLONIAL GOVERNMENTS.

To study the early history of the executive in the colonies is to study practically their entire constitutional history, for the executive was about the only branch of government for which the charters provided. To explain this circumstance it is only necessary to refer to the motives which prompted the colonizing movement. The discovery, exploration, and settlement of America, as of other regions opened up during the same epoch, was a part of the great commercial expansion which characterized the States of Western Europe at the close of the Middle Ages. It was primarily an economic movement. In the sixteenth and seventeenth centuries, gold and silver treasures were objects sought after and planned for with the greatest zeal on the part of all European governments, frequently to the neglect and sacrifice of other important interests. It was quite generally believed that in the soil of the newly discovered continent lay an unlimited quantity of these precious metals, which it was only necessary to dig up and transport in order to acquire at a stroke the priceless boon of immense wealth. If proof were needed of this statement it might easily be found in that provision invariably inserted in charters issued at this period, reserving to the king one-fifth of all the gold and silver that might be found, and prescribing strict regulations for all trade to and from the contemplated settlement. Profit from this

trade being the chief object of the undertaking, naturally enough it was made a monopoly, and the grantees were usually directed to repel with all possible force any person attempting to infringe their economic privilege.

From these circumstances it came about that the charters contained very meagre provisions for the formation of governments in the colonies. The end in view was not so much the government of a province as the regulation of a business venture. Hence it was deemed sufficient by the statesmen who drew up the charters to provide carefully for the protection of the personal rights and liberties of those embarking on the expeditions, and to leave the organization of a government, as far as possible, in the hands of the leaders. The functions and organs of government considered necessary and usually specified were almost entirely executive in character. So far as governments were concerned, the charters did little more than set up an executive officer, provide him with subordinates and assistants, and grant him all the powers, of whatever character, requisite to the controlling of a settlement.

English history furnished examples of two methods conferring such powers for such purposes upon subordinate bodies—the corporate and the proprietary. Throughout the latter half of the Middle Ages charters of incorporation containing rights and privileges of government, were granted to towns and cities by both lay and ecclesiastical rulers. Nor were the grantees towns and cities only. Guilds, merchants' associations and trading companies by no means infrequently had governmental rights and jurisdictions extended to them in the same way. No doubt the charters varied greatly in form and substance. But they were all alike in that they transferred from a superior to an inferior body the right to exercise certain prerogatives of sovereignty upon certain conditions and in certain places. And this is precisely what the American colonial charters did. Many of these charters granted to English corporations conferred the same kind of power and made substantially the same provisions for gov-

ernment as the charters of the American colonial companies. Thus, for example, the Masters and Wardens of the Guild of Drapers in London could make "such pains, penalties and punishments, by corporal punishment or fines and amercements * * * as shall seem necessary"—provided their acts were not contrary to the laws of the kingdom of England.[1] These grants did not, it is true, confer full civil or criminal jurisdiction, but when such was needed it was conferred in specific terms.[2] Again, as to the proprietary method, here also the system was well established. Ever since the time of Charles the Great and the system of counts and dukes devised by him for the administration of border districts of his empire, it had been customary to grant large provinces in fief to feudal proprietors with all right of jurisdiction and government, saving nominal allegiance to the sovereign. Such were the great border counties palatine of Chester and Durham, strengthened and granted out since the days of William the Conqueror as a means of defence against the Scots and Welsh. The proprietors of these great fiefs enjoyed all regalian rights. Free from royal taxation and service in parliament, they had a parliamentary system of their own and levied their own taxes. The judiciary and military were entirely at their disposal. It is true that much of this independence was lost under Henry VIII, but the proprietary charters for America were modeled upon what these tenures had been at the time of their greatest jurisdiction, so that Lord Baltimore was able to plead, in support of royal jurisdiction exercised by him, that he possessed all the rights ever enjoyed by the Bishop of Durham before the time of Henry VIII.

Such were the prototypes for the organization of the colonial companies. The English statesmen of the seventeenth century, not foreseeing the different conditions to which dependencies in America would be subjected,

---

[1] Brooks Adams: "The Emancipation of Massachusetts," 16.

[2] Brentano: "Guilds and Trade Unions," 36 and 61.

freely used both these methods for the purposes in hand. But men of that age could not be expected to anticipate the rise of an empire from a few insignificant trading posts. Whole kingdoms were granted away and governments for enormous territories lightly created by the turning of a sentence. The set phrase which conferred almost sovereign rights and powers on Gilbert and Raleigh and others in the sixteenth century, appears in substantially the same words in the charters of the seventeenth century. It sums up the matter by conferring on the corporation or proprietor the right to make, order, decree, and enact, constitute, ordain, and appoint all such laws and acts as they think meet.[1]

Whichever of the methods was made use of, the corporate or proprietary, made little difference as to the machinery of government actually enjoyed in the colonies themselves. The powers conferred by the charters upon the corporation or proprietor in England were principally executive in character, in accordance with the customary usage known in England, so, a purely executive government was all that was contemplated for the management of the colonies sent out to America.

The Governor and Treasurer were the chief functionaries of the companies which met in London or Plymouth, while the Lord Governor and Captain General was always preeminently the most important man in the colony. He was a copy, on a small scale, of the king, and was vested with many royal prerogatives.[2] Not merely all executive power was in his hand, but all the functions of government for which the charters provided were subject to his administration. There is hardly a trace of the idea of separation of powers. Excepting the cases of Connecticut and Rhode Island, it may be stated that no specific provision was made for a dis-

[1] "Gilbert's Charter;" Hazard: "Collections," I, 30.

[2] Story, "On the Constitution," I, 138.

tinct legislative body by any of the charters.[1] It was left to the companies and proprietors to supply legislatures, or for the colonists to demand and obtain them as best they might. As has been frequently pointed out, this fact explains the phenomenon that legislatures "grew up" as distinctive American institutions. It is not less true or important that the executive was essentially the English institution of the colonial government. The governor, and frequently all or most of his subordinates, were appointed and commissioned in England, if not by the king by the companies or proprietor resident there. These commissions, together with frequent letters of instruction from the same source, formed as important a body of law for the administration of the colonies as the charters themselves. It was by means of the executive that communication was kept up with England; and whatever authority the home government exercised over the colonies was brought to bear through the same agency. In short, the executive served as the medium of transmission of power and law from England to America.

This fact, that the governor was an English officer supported by the English government, and representing English power, soon placed him in great discredit among the body of the colonists. The colonists were opposed to a strong central government of any character whatever. They were especially hostile toward one whose source lay outside the colony, and very soon began their attempt to reduce it. The conflict between the popular assemblies and the governors developed as soon as the colonies were firmly established, continued throughout their history, and made its influence felt even after they had become independent. When our Federal Constitution was discussed and adopted, one of the chief

[1] By the charter of Pennsylvania the legislative power was vested in the proprietor with freemen or their deputies. But no method was provided for assembling the freemen, the ordinance power was granted to Penn, and he was left to say who were freemen. The same is true of Baltimore's charter.

points of objection to it was the fear that the President would become a tyrant, after the model of the Lord Governor and Captain General in the colonies. The same fear and anxiety was manifested still more effectually in limiting the authority of the executive, provided in the State Constitutions then formed. Recollections of the once odious agents of English oppression, the colonial governors, led the people to carefully remove all means of independent action on the part of their executive. But while the presidency, from the very necessities of the case, has developed into a strong administrative department, the power and importance of the governor has gained only on the political side and has still further declined on the administrative side.[1] How much the governor of to-day differs from the officer who bore that title in the seventeenth century and was vested with practically all functions and powers of government, and how this change has come about, can only be understood by following, consecutively, the development of one into the other. Concerning the origin and development of the legislatures which grew up here, and are claimed as American institutions, much has been written.[2] But the executive which, though not American in origin, formed the most important part of the colonial government, influencing profoundly the development of American institutions into which it has itself been incorporated, has never received adequate or proper treatment.[3]

---

[1] Goodnow: "Comparative Administrative Law," I, 62, 80. Schouler: "Constitutional Studies," 156, 267.

[2] Riley: "Colonial Origin of New England Senates." Chandler: "Representation in Virginia." Haynes: "Representation and Suffrage in Massachusetts." Moran: "Rise and Development of the Bicameral System in America." All in Johns Hopkins Studies.

[3] Thus Goodnow, in seeking for the "History of the Executive Power and Authority in America," goes no farther back than the eighteenth century and only devotes six pages to a bare mention of the executive in Massachusetts, Virginia and New York. "Comparative Administrative Law," Book II, chap. 2.

Fisher, in his book on the "Evolution of the Constitution," con-

CHAPTER II.

THE CONSTITUTION AND POWERS OF THE EXECUTIVE.

Any constitutional study of the colonies naturally begins with Virginia, the oldest. The charter of 1606 may be taken as a convenient point of departure, for this date marks the beginning of permanent and successful occupation, and there is henceforth no break in the line of historic constitutional development. By the provisions of this charter the king was made the efficient as well as the ultimate source of government for the colony about to be founded. It established a superior council of thirteen persons resident in London, and an inferior council of thirteen in the colony of Virginia.[1] The appointment of these councils was directly controlled by the king. The London Council he appointed personally; the Virginia Council, through his instructions and orders to the London Council.

The superior council in London was given "the superior Managing and Direction, only of and for all Matters that shall or may concern the Government, as well of the said several colonies, as, of and for any other Place or Port,

---

fines his work to tracing back through the previous colonial and English documents the various clauses of the Constitution, in order to show that that instrument was neither an invention nor an imitation.

An excellent treatment of the sources of our Constitution is that of C. E. Stephens, in which he shows how our President is an enlarged colonial governor, as the colonial governor was a miniature English king. But it is not a part of Mr. Stephen's work to give even in outline a history of the executive in the colonies.

[1] The charter also provided similarly for a second or Plymouth Company, but no permanent settlement was made by it.

within the aforesaid Precincts."[1] The inferior council in Virginia was to "Govern and order all Matters and Causes, which shall arise, grow, or happen, to or within the said several Colonies, according to such Laws, Ordinances, and Instructions, as shall be in that behalf, given and signed with Our Hand or Sign Manuel." Each council was to have a seal of its own.

These provisions contain all that the charter enacts for the erection of a government. There were no directions as to the mode of organizing the councils or the exercising of their functions.[2]

To determine these points we must go beyond the charter to a body of instructions issued by the king, November 20, 1606, appointing the London Council. Fourteen persons were named in this document, with "Full Power in the name of his Majesty to give Directions to the Councils resident in America for the good Government, and proper disposing of

---

[1] Hazard: "Historical Collections of State Papers," I, 53.

[2] In addition, however, to the general grants quoted, certain powers were especially conferred on the company. These may be summed up as follows:

(1) To establish and regulate mines.

(2) To coin money.

(3) To transport colonists and their property.

(4) To repel invasion and defend settlements.

(5) To regulate trade, of which a monopoly was given.

(6) To assign lands to the planters, to be granted under patent of the king.

The first of the above powers was granted to "The said several councils for the said several colonies," and contains the clause, "without any interruption from Us, Our Heirs, or Successors." Grants of the other powers are "unto the said Thomas Gates, Sir G. Somers, Richard Hacluit, Edw. Maria Wingfield and their Associates of the said first Colony and Plantations." This last clause, however, cannot be taken as conferring power on any body outside the councils. No such body was created expressly; it is doubtful if it was intended to create a corporation. On this last point, see H. L. Osgood in "Pol. Sci. Qu.," 1887, XI, 265.

all causes as near as possible in accordance with the Common Laws of England."[1] The king reserved the power of changing this London Council at his pleasure, and of naming the first members of the council for Virginia. This latter council was directed to choose one of its own members president for one year, and was entrusted with the following discretionary power: "And it shall be lawful for the major Part of the said Council, upon any just Cause, either Absence or otherwise, to remove the President, or any other of the Council; and in Case of Death or such Removal, to elect another into the vacant place; provided always, that the Number of each of the Said Councils shall not exceed thirteen." To these instructions from the king for the Virginia Council, the London Council, by an order of December 10, 1606, naming the members of the Virginia Council, added, that the president should have a double vote in case of tie; should take the oath of allegiance before the council and then administer the same to the other members; and should be commander of the forces of the colony.[2]

It will readily be seen that this form of government was in all essential features an absolutism. The king appointed and instructed his council in London. The council in London appointed and instructed the council in Virginia. The actual colonists were not to be consulted and had nothing whatever to say in the government of the colony. Within the colony the only governing body was the president and council. This body was given the ill-advised and arbitrary power of deposing as well as electing its own officers and of expelling members from their seats, a power which gave ample opportunity for the intrigues of the jealous councillors. In the two years that this charter was in operation, two presidents were deposed, three members suspended, and the companies' affairs in the colony thus subjected to the arbitrary management of one or two men. For to this

[1] Stith: "History of Virginia, 37.

[2] This document is given in full in Niell, 4.

council, thus illy organized, was given combined power to make and execute laws and to punish disobedience to them.[1]

Owing to the failure of the Virginia Company to realize the high profits it had hoped for, and to a wide interest in colonial affairs among Englishmen of note, a new charter was obtained for the colony in March, 1609. An important change of policy was made by the grant of this charter. A corporation in England was expressly created, in which was centered the powers formerly exercised by the king and the London Council. By this change the king was eliminated from active participation in the affairs of the colony, and the administration entrusted to a commercial body under the name of "The Treasurer and Company of Adventurers and Planters of the City of London for the First Colony of Virginia." Upon this corporation was conferred all the powers and rights of any corporation in England. Among the several hundred of its members there were eight earls, twenty other peers, and ninety-eight prominent knights and gentlemen. Its government contained only one popular principle. The first members of the council, fifty in number, were named by the king in the charter, and the treasurership was bestowed on Thomas Smith. Thereafter all vacancies were to be filled "out of the Company of the said Adventurers in their Assembly for that purpose." The treasurer was given power to convene assemblies for such election, and councillors so chosen were to take their oath before one of the king's high officers. This council was then given, by the charter, "full Power and Authority * * * to nominate, constitute and confirm all Governors, Officers and Ministers which shall be by them thought

[1] "Power to constitute, make and ordain from time to time, Laws and Ordinances for the better government and Peace of the Colony; provided those ordinances extend not to Life or Member. Said laws and Ordinances to stand until altered or made void by the king or Council of England." "King's Instructions." Nov. 20, 1606. Stith, I, 37. The president and council could hear all suits and punish offences; only crimes for which the penalty was death were to be tried before a jury.

fit or needful for the Government of the Colony or Plantation." Also to "make, ordain, and establish Orders, Laws, Directions, Instructions for the government of the said Colony; * * * and to abrogate or change the same at any time in their own good Discretion."[1] This council was further empowered to admit new members to the corporation. The old president and council in Virginia was, by express command, to be dissolved as soon as the officers appointed by the new council in England should arrive in the colony.

It will be noted that the London Council was given the power of appointing officers for the government of the colony. The charter itself, however, distinctly fixed the powers of such officers when once appointed. It granted them "full and absolute Power and Authority to correct, punish, pardon, govern, and rule," according to the instructions of the London Council, or, in default of such instructions, according to their own discretion, provided such proceedings were in accord with the laws of England.[2] The charter further provided that any principal governor which the London Council might appoint for Virginia, was to be vested with full power to use and exercise "Martial Law in Cases of Rebellion or Mutiny, in as large and ample Manner as our Lieutenants of Counties in their own Realm."[3]

In accordance with the provisions of this charter the London Council, on the 28th of February, 1610, issued a commission to "Sir Thomas West, Knight Lord La Warr, to be principal Governor, Commander and Captain General, both by land and sea, over the said colony."[4] This document is interesting and important as the first commission to a Lord Governor of an English colony in America. It granted to Lord Delaware the full extent of power authorized by the charter, and made his authority supreme over all

[1] Hazard, I, 67. [2] *Ibid.*, 70. [3] *Ibid.*, 71.

[4] This commission was printed for the first time in Alexander Brown's "Genesis of the United States," I, 375.

other officers and commanders in the colony, and was to continue during his lifetime. In case of mutiny or rebellion he could declare martial law; and in all other cases, "rule, punish, pardon, govern," according to instructions, or, in default of instructions, according to his own discretion, by such laws as he with his council might establish. He was given power to choose his own council and all other officers necessary for the government of the colony, except the lieutenant governor, admiral, the vice-admiral, the marshal, and sub-governors of provinces, who were to be appointed by the London Council. Moreover, he was empowered to suspend any officer in the colony and appoint another in his place until a decision could be rendered by the London Council. In case he was compelled to leave the colony he could appoint a deputy to fill his place for one year.

Two points must be noticed in regard to this, the first permanent English government in America. In the first place, there was no attempt at a separation of the legislative or judicial functions from the executive. Ample power was conferred on the governor and his subordinates for all matters. His authority was as extensive as the London Council were able, under the charter, to make it, and the charter allowed him power "full and absolute," except as limited by instructions or the laws of England. In other words, the governor was vested with all powers not denied to him expressly by the charter or the ordinances of the London Council, or implicitly by the statutes of Parliament. The second point to be noted, is that the government in the colony was now centered in one chief with several subordinates, the chief being responsible only to the source of his power in England. This was a decided advance over the former system of a "president and council," with co-ordinate powers and authority to depose its own officers and members. The plan of divided power was tried on several later occasions in other colonies but never worked well.

Under this organization the nature of the administration

would naturally depend very largely upon the character of the person who occupied the post of chief executive. During the next few years the personnel of this office changed frequently. Owing to the ill health of Delaware, he remained in the colony but a few months, and the real direction of the government in Virginia fell to Sir Thomas Gates and Sir Thomas Dale, who acted as deputy governors. Both these men were trained soldiers, a fact which largely explains the character of the laws introduced into the colony by them. Gates was knighted while serving in a campaign against Cadiz, in 1596. Later, he was captain, along with Dale, in a regiment in Holland, from which both men were recalled in order to receive appointments in Virginia. The military law then in force in Holland, which was naturally well known to these officers, determined, under their direction, the nature of the first Virginia code, which placed the colony practically under martial law. This body of laws, first drawn up and introduced by Gates and Delaware, in 1610, was later enlarged and enforced by Dale.[1] Its extreme severity cannot be questioned. It did full justice to the customs of the country and the age from which it was an inheritance. Death was made the penalty for a large number of crimes, some of which were only very trivial offences; and a court martial was the body before which almost every other cause was to be adjudicated.[2] It is the general opinion of historians, however, that such methods were necessary in order to bring the turbulent and lawless

---

[1] Brown, II, 529.

[2] Peter Force: "Tracts," III; "Articles, Laws and Orders, Divine, Politique and Martial for the Colony in Virginia; first established by Sir Thomas Gates, Knight, Lieutenant General, the twenty-fourth of May, 1610; exemplified and approved by the Right Honorable Sir Thomas West, Knight, Lord Lawair, Lord Governor and Captain General, the twelfth of June, 1610; again exemplified and enlarged by Sir Thomas Dale, Knight, Marshall and Deputy Governor, the twenty-second of June, 1611."

classes in the colony under the control of the governor.[1] Under its judicious application and the forceful administration of Dale, the colony became prosperous and orderly.

The third and last Virginia charter was granted in 1612. Its object was twofold: to include the Bermuda Islands within the territory of Virginia, and to confer a wider scope of power on the corporation. But it is significant here chiefly for the radical change it made in the organization of the London Company. Up to this time the business of the company had been transacted by its council in London; but by the charter of 1612 it was provided that the entire membership of the corporation should have a voice in its government. Matters of minor importance could be dealt with at the weekly meetings, at which the treasurer and nineteen other members of the company were a quorum. But for affairs of greater weight there were to be held each year in London, "four Great and General Courts of the Council and Company of Adventurers for Virginia." These courts were given full power, (1) to choose members of the council, (2) to nominate and appoint all officers for the government within the colony, (3) to make and ordain all laws and ordinances for the government of the colony.

By this measure the appointment and control of the governor and other officers within the colony were taken from the small inner body, the London Council, which had hitherto exercised it, and placed directly in the hands of the larger body, the corporation itself. This change was important. The Virginia Company had now assumed its permanent form. Its meetings became popular and of the greatest significance.[2] The corporation could admit and expel members. Before its dissolution, in 1624, its membership had grown to near one thousand, two hundred of

---

[1] Brown, II, 529; Stith, 122; Doyle, 138; Chalmers, 31. It is possible that the law did not apply to the independent classes but only to slaves. See Doyle for this view.

[2] Bancroft, I, 145.

whom frequently assembled at its meetings.[1] Many of the most prominent and liberal members of Parliament were its supporters and took part in its deliberations, which became scenes of animated democratic discussion and debate.[2] It was in these meetings that governors of Virginia were now appointed and instructed. This form of administration was severe, permitting the governors to maintain for several years a reign of martial law, but was, on the whole, efficient, thorough, and productive of permanent good for the colony.[3]

The organization of the government within the colony was not immediately changed by the charter of 1612. There was still no attempt at separation of powers. Though Delaware returned to England in 1610, his commission was not superseded until 1618, Gates, Dale, Yeardley, and Argall holding the office as deputy governors.[4] The administration of Gates and Dale has already been noticed. That of Yeardley contrasted strongly with his predecessors. Yeardley had been president of the council and was left by Dale as deputy when the latter departed for England, in April, 1616. He was superseded by Captain Argall, in May, 1617, but was later twice reappointed to the governorship, which office he always administered with marked ability and justice. Yeardley was by nature upright and merciful, and after the stern rule of Dale and Gates his mild administration was welcomed by the colonists. It was during his first governorship that the first legislative Assembly was called. Many other important advances were made, and the power, population and prosperity of the colony was greatly increased.[5]

---

[1] Stith, 276.

[2] Burk, I, 300, Appendix. Among the members of the company we find the names of Edwin Sandys, Sir John Holles, Oliver Cromwell, Sir Dudley Diggs, the Earl of Southampton, Sir John Wolstenholm, Robert, Earl of Warwick, Nicholas Ferrar, George Somers and William, Earl of Pembroke.

[3] Burk, I, 315, Appendix. [4] Stith, 132, 138, 145; Niell, 134.

[5] The Virginia Company, "Virginia Historical Collections," New Series, VII, 5.

But the colony was not always administered with such ability. During his short reign of eighteen months as deputy governor, Captain Argall found opportunity to perpetrate a considerable amount of mischief. He was a relative of Sir Thomas Smith, the treasurer of the London Company, and of a wild and adventurous nature. His first advent into the colony, in 1619, was in charge of a shipload of wine intended for private trade with the inhabitants, contrary to the regulations of the company. His administration was marked by the same disregard for law. After his appointment, it is said, he came to the colony with the direct intent of trafficking in violation of the laws he was to administer. Fortunately, his rule was short; for by his sumptuary laws and his arbitrary judicial rulings he managed to make himself thoroughly odious. After his recall to England, he secretly stole away from the colony before the arrival of his successor. He was brought to account by the council in London, but was shielded by his commercial partner, the Earl of Warwick.[1]

In 1618, however, after the death of Lord Delaware, the London Company reappointed Sir George Yeardley administrator of the colony and issued to him a new commission and instructions as Lord Governor, Commander and Captain General.[2] By these documents important changes were made in the Constitution of Virginia. The first step in the separation of powers was here taken. Governor Yeardley was instructed to hold a General Assembly once a year, "whereat were to be present the Governor and counsell, with two Burgesses from each plantation."[3] Previous to this time the only legislative function that had been exercisable in the colony had been the governor's ordinance

[1] The Virginia Company, 9.

[2] "Calendar of State Papers," Colonial, October 25, 1618.

[3] The entire commission is not known to be in existence. See the "Virginia Magazine of History," II, 57, where extracts are quoted. For an account of the proceedings of the first Assembly, see "Calendar of State Papers," July 30, 1619.

power. But by the creation of a distinct law-making body, the legislative power of the governor was greatly curtailed, though not entirely superseded. The governor and his council were to sit in the Assembly with the burgesses and doubtless had great influence in its deliberations. The Assembly, however, elected their own speaker. As the complete text of the commission has not been preserved, it is not known whether the governor was given the power of the veto.

At the same time that the Assembly was constituted provision was made for the permanent support of the governor. Three thousand acres of land were set aside "in the best and most convenient place in the territory of Jamestown * * * to be the Land and Seat of the Governor of Virginia." [1] The governor's guard, previously assigned to Governor Argall, and fifty other persons, were to be settled on this land as tenants, one-half the profits arising therefrom to belong to the governor. Likewise, one-half the profits arising from the rental of the company's lands was to be employed by the governor for the "entertainment of the said councils of State there residing." [2] This was the earliest provision for the permanent support of a governor in America. Being made at the same time that the Assembly was established, it is an indication that the executive officers were not intended to be dependent in any way upon the action of the legislative body. The independent position of the executive was still further assured the next year, 1619, when the company in London passed an ordinance that the officers in Virginia should be maintained from the public lands, and that "no liberty should be granted tending to the exemption of any man from the authority of the governor." [3]

At the same time that the above action was taken, the

---

[1] The document is printed in the "Virginia Magazine of History," II, 155.

[2] "Virginia Magazine of History," II, 156.

[3] This is printed in Force, III, with several other documents, entitled "Orders and Constitutions."

London Company passed a law limiting the governor's term of office and appointing power. We have seen that Delaware had been commissioned for life, with power to choose his own council. On his arrival in Virginia, he had at once chosen a council of seven persons.[1] It was now ordered that "the commissions to all Officers in Virginia shall be only for three years in certain, and afterward during the company's pleasure—Only the Governor shall upon no occasion hold that place above six years."[2] The council was to be chosen by the company in its quarter court by erection of hands; the more important officers, as governor, lieutenant governor, admiral and marshal were to be elected by ballot in a general court.

Governor Yeardley's commission expired in 1621, and as he refused to have it renewed, Sir Francis Wyatt succeeded him. All doubts as to the relation between the governor and the Assembly now disappear, for on July 24, 1621, there was issued by the London Company an ordinance establishing the Council of State and Assembly of Burgesses in Virginia.[3] By this order nineteen councillors were appointed to assist and advise the governor, to be known as the Council of State. The governor was empowered to summon the Assembly yearly, and was given the right of veto on all its acts. By express provision the council was to be a part of the Assembly. In case of the governor's death the council was empowered to choose a successor for the time being; but if this was not accomplished within fourteen days the lieutenant governor or treasurer was to hold the office.

The constitution of the executive as thus provided continued with but slight changes during the period under consideration.

When the London Company was dissolved, in 1624, the appointing power fell to the king, and the term of office was

---

[1] Letter to the company, Niell, 42.

[2] Force, III, "Orders and Constitutions."

[3] Stith, I, Appendix, 32; Henning, I, 110.

during his good pleasure.[1] But further than this there was little change. The precedent established by the London Company was allowed to stand. A letter from the governor and Assembly to the king, immediately after the recall of the charter, shows the wish of the colonists in regard to the executive. They desire that "the governors sent over may not have absolute authority, but be restrained by the council, as hitherto; short continuance of the governor's term is very disadvantageous: the first year they are raw in experience; the second, begin to understand the affairs of the colony, and the third, prepare to return." [2] These requests were respected by tacit consent in the commission issued to Sir Francis Wyatt by the king, in 1624 [26th August], appointing a governor and a council of eleven persons. Power was conferred on this body to "perform and execute * * * direct, govern, correct, and punish * * * in the time of Peace or Warre * * * as *fully* and *amply* as any Governor and Council resident there, at any time within five years last past." [3]

This reference to the precedents of the past five years was understood as confirming the Assembly as constituted by the Virginia Company. The commission was not for any specified term, but to continue during the king's pleasure, and the governor and council were to be subject at all times to the royal instructions.

In 1626 Sir George Yeardley was reappointed to succeed Governor Wyatt and some minor additions were made to the functions of the executive officers. Power was given to the governor to issue commissions in his own name to the inhabitants of the colony licensing "expeditions" into the interior for trade and discovery and for defence against the Indians. Better insurance was made against vacancies by the provision that, in case of the death or forced absence of governor and deputy governor, the council was to appoint

[1] "State Papers," Colonial, July 3, 1624.
[2] "State Papers," February 28, 1624.
[3] Rymer's "Foedera," Tome 17, 618.

a governor selected from its own number; likewise, any vacancy in the council was to be immediately filled for the time being by the governor. At the same time the growth of executive business in the colony is indicated by the addition of a secretary of state to the list of officers.[1]

No change of importance was subsequently made in the constitution of the executive in Virginia by royal command. Berkeley's commission, in 1641, increased the council to eighteen members, and provided that each member, with ten servants, should be free from all taxes, except such as were levied expressly for war, "the building of a town or church, or to pay the minister's fees." [2]

Judicial matters within the colony at first belonged exclusively to the functions of the executive. When Governor Wyatt was first appointed in 1621, he was instructed to appoint times for the administration of justice, and the council was ordered to "sit one whole month about state affairs and law-suits."[3] Copies of these judicial proceedings were to be sent to the London Company. The governor was given absolute power to judge and punish any and all neglect or contempt of his authority on the part of any officer, except a councillor. In the latter case the quarter court, composed of governor and council, had jurisdiction.

Throughout this period the quarter court remained the supreme judicial body within the colony. The governor also at first possessed and exercised the power of establishing inferior courts in the counties and towns, and of appointing commissioners as judges to hold them.[4] But

---

[1] Yeardley's commission is in Rymer's "Foedera" Tome 18, 311. See also his "Instructions" in the "Virginia Magazine of History," II, 393.

[2] Rymer's "Foedera," Tome 20, 484. The commission to Sir John Harvey in 1636 is in almost exactly the same words as Yeardley's. "De Commissione speciali Johannis Harvey, Militi, pro meliori Regimine Coloniæ in Virginiæ." Rymer, Tome 20, 3.

[3] Henning, I, 16.

[4] *Ibid.*, 131, 185, 176; see also "Instructions to Berkeley." "Virginia Magazine of History," II, 281.

after the constitution of the colonial Assembly, the power of regulating the lower courts was assumed by that body.[1] Nevertheless, in Virginia, as in the other colonies, the judicial functions continued to be the governor's most important duties. Criminal and civil suits of importance, testamentary affairs, as well as petty disputes of all descriptions, were heard and determined by him.[2]

It should not be overlooked that the governor was the military as well as the civil head of the colony. The two officers whose characters made the most indelible impression in the administration, Gates and Dale, were trained soldiers and ruled the colony on a military basis. Instructions to nearly all the governors conferred on them power to make war and negotiate treaties of peace. In 1648 the Assembly declared that this grant implied and warranted the levying of soldiers by the governor without the action of the Assembly.[3]

A great part of the routine and matter-of-fact "governing" of the colony was accomplished by means of the ordinary proclamations of the governor. The instructions to Yeardley and Berkeley specify, with great detail, that they are to exercise a general supervision over the planting and shipping of tobacco, the coming and going of masters of ships and their passengers, and the regulation of trade. The governors were always directed to see to the provision of proper places of worship and the maintenance of ministers. The proclamations carrying out these directions throw much light on the position the governor occupied. Many such "orders" issued before 1629 have been preserved. They relate to the price to be charged for commodities, dealings with the Indians, the planting and cultivating of tobacco, and similar subjects.[4]

During the period of the Commonwealth in England, after Virginia had submitted to the commissioners sent out

---

[1] Henning, I, 125, 168.
[2] *Ibid*., 145.
[3] *Ibid*., 355.
[4] *Ibid*., 129.

by Parliament, the constituent source of the executive was entirely changed. Articles of agreement were entered into between the commissioners and the Assembly, by which the government was settled.[1] This act provided that the officers for the colony should be chosen for terms of one year, by the commissioners and the House of Burgesses for the first year, afterward by the House of Burgesses alone. Such officers were to continue to rule according to the instructions of Parliament, the laws of England and the orders of the Assembly. In accordance with these regulations Richard Bennet was elected governor early in 1652, being the first executive chosen by the representatives of the people in Virginia.[2]

The governor and council continued to be members of the Assembly, but were deprived of the veto. Otherwise, they exercised the same functions as before, except that a larger amount of executive and judicial business was now transacted by the Assembly. This arrangement continued until 1660 when, on the Restoration of King Charles in England, the Assembly in Virginia lost its ascendency over the executive and the governor became again the "king's officer." [3]

Massachusetts.

The Massachusetts charter of 1629 is almost identical in character with the Virginia charter of 1612. It created a corporation to be known as the Governor and Company of Massachusetts Bay in New England, on which it conferred the entire management of the colony. Like the Virginia charter, it provided for the double organization of the company in England. In the first place, there was to be a governor, deputy and eighteen assistants, who were to meet

---

[1] Henning, I, 363.

[2] Beside Bennet, three other governors were elected by the Assembly during this period. See Appendix, iii.

[3] See below, 70.

at least once a month for the "handling, ordering and dispatching of all such Buysinesses and Occurents as shall from time to time happen touching or concerning the said Company or Plantacon." In the second place, it provided that there should be held by the governor, or deputy, and at least seven assistants, four times each year, one "Great, generall and solemne Assemblie," to which the freemen of the company or members of the corporation were to be summoned. These General Courts were charged with the general administration of the affairs of the company. They were empowered to admit members into the corporation, choose all officers of the company, and "make Laws and Ordinances for the Good and Welfare of the said Company and for the government of the said Lands and Plantacon, and the people inhabiting and to inhabit the same," the only condition being that such acts should not be repugnant to the laws of England. The first governor, deputy and assistants were named by the king in the charter, but all subsequent choice of officers was to be made yearly in the Easter court. The governor was empowered to call meetings of the General Court, and the court could remove any officer and fill any vacancy.

Such was the organization of the company in England. In providing for the government within the colony, the charter left substantially the same freedom to the company as did the last Virginia charter. The only provision touching this point was for the appointment, by the governor and company in England, of "all Sortes of Officers, both superior and inferior, which they shall find needful for that Government and Plantacon;" such officers were to have "full Power and Authoritie to correct, punish, pardon, govern and rule according to instructions from the company."

In accord with this provision of the charter, the company, April 30, 1629, choose John Endicott governor of the colony, to be sent to Massachusetts. He was to be assisted by a council of twelve members, chosen by a most curious method. The company selected seven; these, with the gov-

ernor, were to choose three more; the two remaining were to be named by the colonists themselves. "The old planters that will live under our government are authorized to choose two of the discreetest men among themselves to be of the said counsell."[1] To the governor and his advisors thus selected, the company then delegated the power of naming whatever sub-officers they found necessary; of removing incompetent or objectionable officials, and of filling any vacancy that might occur. All officers were to hold for one year. The governor could call meetings of the court or council, which was empowered to enact "Laws, Ordinances, Orders and Constitutions" for the administration of justice and infliction of punishment on malefactors, and for the orderly government of the inhabitants.[2]

It will be seen that this, the first permanent government established in New England, was quite different from that first constituted for Virginia, though the royal grants upon which they were based are not greatly dissimilar. While Lord Delaware was made governor for life and empowered to choose his own council, Endicott was to hold office only one year, and a majority of his council was selected by the company in England, two of the remaining members being representatives of the actual colonists. Again, there was no provision for the exercise of martial law by Endicott; and, lastly, all the powers of government which, in Virginia, were expressly conferred on Governor Delaware, were, in Massachusetts, so far as they were conferred at all, given to the governor and council. Thus, from the very first, before there was evidence of any thought on the part of the company of removing with the charter from England to the colony, a government was contemplated which should consult the needs and desires of the colonists.

The Massachusetts charter has been compared with the

[1] "Transactions of the American Antiquarian Society," III; "Archæologia Americana," containing a portion of the records of the company of Massachusetts Bay.

[2] "Form of Government for Massachusetts Bay," Hazard, I, 268.

Virginia charter of 1612. In one important point, whether intentionally or not, they were different. The Virginia charter was express in locating the corporation in England; the Massachusetts charter was not. This omission gave opportunity for a step which has been made to account for the wide difference between the forms of executive developed in the two colonies, viz: the removal of the governor and company with the charter from England to the colony.[1] By this change all direct official relation with England was cut off, for, according to the charter itself, all interference with the independence of the corporation on the part of the king ceased with the appointment of the first governor and council. When they removed their place of meeting to Massachusetts, they left behind them no organization to represent the corporation. This change made possible the election of a governor and other executive officers by popular suffrage, the distinguishing feature of the executive in Massachusetts during this period. As long as a company resident in England exercised an ultimate control over the colony, the chief officers must have remained subject to appointment and removal by that company. But when the company settled in the colony, it could no longer maintain a distinct and exclusive organization. This is shown by what actually occurred.

After the transfer had been decided upon at a general court of the company in London,[2] officers were chosen who were willing to emigrate to New England and carry on the government there. On their arrival in Massachusetts these

[1] The legality of this act has been discussed pro and con by historians. Perhaps the condition is best expressed by saying that it was extra-legal. See H. L. Osgood; Oliver; "The Puritan Commonwealth," 26: "Lowell Institute Lectures," 1869, 371; Ellis: "Puritan Age in Massachusetts," chap. 2; Palfrey: "History of New England," I, 306.

[2] "Records of Massachusetts Bay," I, 49–59. The question of transfer was first proposed by the governor on the twenty-eighth of July and was discussed from time to time until the twentieth of October.

officers superseded the governor and council sent out there the year before, but continued for a time to act in the same capacity as while in London. The governor remained merely the president of the company, with no power to veto its legislative acts and no special civil or judicial capacity. The colonists still had no additional share in the government, except as they were admitted into the body of freemen of the company. This status, however, could not continue long. By the admission of colonists into the rights of freemen of the company, the latter tended to become co-extensive with the colony, which thus became a self-governing commonwealth.[1] From this time the company began to reshape its organization to meet the demands of this new position without unnecessarily violating the letter of the charter. The first act that indicated this was a resolution passed at the first General Court held in Massachusetts, August 28, 1630, providing that the governor and deputy governor should always, by virtue of their office, be justices of the peace, with the same powers as justices of the peace in England. They were empowered to arrest and imprison offenders, and, with the approval of any one councillor, inflict corporal punishment.[2] On being vested with these powers, impossible on the part of a president of a corporation in England, the governor became in fact the civil officer of a commonwealth.

The mode of electing the governor was changed several times before it was permanently fixed. For the first two or three years after the removal of the company the governor was chosen by the assistants, who were themselves elected by the Freemen in the General Court.[3] Then, in 1632, the freemen grew jealous and provided for the choosing of the

---

[1] "Records," I, 79, 87. On October 19, 1630, 108 persons resident in the colony applied for admission to the corporation; and on May 18, 1631, the General Court enacted that only church members were to be admitted as freemen.

[2] "Records," I, 74.

[3] *Ibid.*, 79

governor and deputy governor, along with the assistants, by the court.[1] Even when the whole body of freemen no longer met for legislative purposes, but sent instead representatives to the General Court, they continued to assemble once every year in a General Court of Election for the selection of their magistrates. As the colony increased in size, however, this became impracticable, and a system of voting by proxy was devised for elections.[2] The proxy system was never satisfactory and in 1640 another method was adopted, which, with slight changes in 1642 and 1646, continued until the recall of the charter in 1691. It provided that the freemen should meet in their towns, cast their votes for the magistrates, and send them sealed to the General Court, where they were to be opened and counted.[3]

The charter provided that the governor's council should consist of thirteen assistants. This number was seldom chosen, nine being the usual limit. In 1631 an act was passed providing that when the number of assistants in the colony was less even than nine, the majority of those present at any meeting might transact business as lawfully as though the entire number were present.[4] An attempt was made in 1635 to increase the dignity and importance of the magistrates by the creation of a standing council, composed of six magistrates, chosen for life, of which the governor was to be president. This council was given some authority during the intervals when the General Court was not in session.[5] It did not, however, supersede the council of assistants, and indeed it was rather difficult to determine just what functions it was intended to perform. In 1639 it was given the military power which had formerly been placed in commission, but its powers were never clearly defined and immediately an outcry was raised against it because of the life tenure of its members. The General Court

[1] Records," I, 95.
[2] *Ibid.*, 188, 118.
[3] *Ibid.*, 333; II, 37; III, 86.
[4] *Ibid.*, 84.
[5] *Ibid.*, 167, 183, 192.

was compelled to pass an act declaring that the new council was not to take the place of any of the magistrates yearly elected.[1]

The governor in Massachusetts did not possess a direct veto on legislation as did the governor in Virginia.[2] But both governor and assistants were a part of the General Court, and so had a voice in the enacting of laws, at first sitting with the freemen or their deputies, but after 1643 as a separate house.[3] In case of a tie vote in the Assembly, the governor could cast a deciding vote.[4] He might call meetings of the General Court, but could not adjourn or dissolve them.[5] Moreover, such meetings were not left dependent upon the call of the governor, but were fixed at stated intervals by the court itself. No permanent salary was settled on the governor, as in Virginia; he was granted an allowance each year by the court, and was thus dependent upon the legislature for his support.[6]

It was in judicial matters that the governor and assistants found their greatest influence and importance. They constituted the highest court of the colony. One of the first laws after the transfer of the charter was that of September, 1630, enacting that the court of assistants should meet every third Friday; but the next year this was changed to the fourth Tuesday of each month.[7] These courts are important, "their business being that of adjudicating, as

---

[1] "Records," I, 264. Inasmuch as it has been taken by some as though a new order of magistrates, contrary to the patent, are created by the order for a standing council for life, it is ordered that such was not the intent of the act, but that such councillors were to be chosen as had formerly been chief magistrates; acts of such councillors not to have any force, except as they be chosen to some place of magistracy by annual election, their acts to be done as magistrates and not as councillors.

[2] "Records," I, 169, March 3, 1635–6.

[3] *Ibid.*, II, 58; Dane, Prescott and Story: "Charters and General Laws of the Colony of Massachusetts Bay," 88.

[4] "Dane, Prescott and Story, 90. [5] "Records," I, 118.

[6] *Ibid.*, 106, 128, 215, 319. [7] *Ibid.*, 75.

well as legislating, upon matters of organization, civil and criminal jurisprudence, probate and police."[1] In 1634 after the establishment of inferior courts, the court of assistants, composed of the governor and assistants, met twice a year, or oftener at the call of the governor. It had jurisdiction in appeals from lower courts, and original jurisdiction in all cases of demise and capital and criminal causes. At the same time the judicial functions of the General Court were limited to appeals from the court of assistants, and impeachments.[2] The pardoning power was in the General Court alone; but the governor, deputy and three assistants could grant reprieve.[3]

The military power of the governor was not so ample as in the other colonies. The General Court undertook to regulate military affairs to the minutest detail of drilling.[4] In 1634 a commission composed of the governor and three others was appointed and given charge of all wars that might occur within one year.[5] In the following March this commission was given absolute military power to arm, train, declare martial law and put offenders to death. In 1636 the military force was ranked in three regiments, with the governor as commander-in-chief; the inferior officers were chosen by the General Court on the recommendation of the regiments and the towns.[6] The military power of the governor and council was further extended in 1645, by giving them authority during the intervals between the sessions of the court to levy soldiers for the defence of the colony.[7]

---

[1] "Palfrey," I, 325.

[2] Dane, Prescott and Story, 88. Whitmore: "Colonial Laws of Massachusetts," 3, 152.

[3] Dane, Prescott and Story, 89.

[4] "Records," II, 42.

[5] *Ibid.*, I, 125, 138, 146.

[6] *Ibid.*, 86.

[7] Whitmore, 33; "Records," I, 142, 209.

A bodyguard was allowed the governor in 1634, to be sustained at public charge and to attend him on the first day of every session of the General Court. In the "Collections of the Massachusetts Historical Society" for 1798 there was published an "abstract of the laws of New England as they are now established. Printed in Lon-

Considerable anxiety was manifested from time to time on the part of the more democratically inclined of the colonists in Massachusetts, lest the government should fall into the hands of the few and a tyranny be developed. Although the officers were elected by the people and none for a longer time than one year, the practice soon arose of re-electing satisfactory and efficient officers year after year. Doubtless the same inconvenience arising from frequent change of officers was experienced as in Virginia. During the thirty years, from 1630 to 1660, three men, John Winthrop, Thomas Dudley and John Endicott, held the office of governor for twenty-six years.[1] Elections were held each year and no governor held the office for more than five successive terms, yet it was feared by some that the office was becoming hereditary.

Two of these men who administered the office of chief executive so long were undoubtedly supporters of an aristocratic government. John Winthrop, the father of the colony, was descended from an old Suffolk family, noted for its attachment to the reformed religion since the earliest period of the Reformation.[2] His ancestors had been lawyers of note since the reign of Henry VIII, and the future

---

don in 1641." In this abstract the duties of the magistrates are summarized as follows:

(1) The governor alone has power to call general courts by warrant.

(2) With the assistants he has power to see that the laws are executed.

(3) To consult and provide for the maintenance of the state and people.

(4) To hear and decide appeals from inferior courts.

(5) To preserve religion.

(6) To oversee the forts and take order for the protection of the country from invasion and sedition.

(7) To hear and decide all causes brought before them throughout the commonwealth.

[1] See Appendix, I.

[2] Moore: "Lives of the Governors of Massachusetts," 237.

governor of Massachusetts had been early trained to the legal profession. At the age of eighteen he was made a justice of the peace. In the office of governor of Massachusetts, Winthrop devoted his entire time and energy to the public service. His idea of the administration of justice was that the severity of the law should be tempered with mercy, judging that in the infancy of a colony the law should be administered with greater laxity than in a settled state.

Winthrop's views on this subject met with the strong opposition of the clergy and of several governors, among them Thomas Dudley. Dudley, the son of a soldier, educated in the household of an earl, and trained in the office of a judge, stood for the strict and unflinching enforcement of the letter of the law. Governor Winthrop was charged with being too lenient in dealing with malefactors. The question of policy was referred to the clergy, who decided that in a young colony a more strict enforcement of the law was necessary than in an old state. Henceforth this was the policy of the government, even Winthrop yielding to the judgment of the ministers and confessing himself in error.

In one other respect the views of Winthrop were not in harmony with those of the majority of the colonists and were eventually thwarted. He did not have a very high opinion of the self-governing ability of the common people and deprecated extreme democratical forms. He is said to have "plainly perceived dangers in referring matters of council and judgment to the body of the people." It was one of his maxims that "the best part of a community is always the least, and of that least the wiser is always the lesser; wherefore the old law was, 'choose ye out judges,' etc." Winthrop struggled against the assumption of power by the popular body, boldly asserting that magistrates once chosen had authority from God. But, although he was entirely vindicated when brought to trial on the specific

charge of exceeding his power,[1] he was compelled to see the scope of functions of the General Court constantly widen to the prejudice of the governor and council.

The colony of Plymouth offers no points of importance in addition to that of Massachusetts, so far as concern the organization of the executive. During the first ten years of its existence the colony had no legal connection with England whatever. Its only foundation in law was the charter of 1629, obtained from the Plymouth Company. But this never received the sanction of the king. Hence, when the Plymouth Company was dissolved in 1634, the colony legally fell to the crown as a royal province. As in Massachusetts, there was a governor[2] and a council of assistants chosen yearly in a general court of the freemen.[3] At first there was but one assistant; in 1624 five were chosen, and in 1637, seven, which number was retained until 1691, when the colony was incorporated with Massachusetts.[4]

Rhode Island.

Rhode Island and Connecticut, planted by exile emigrants from Massachusetts, who were for a long time without any legal title to the land they occupied, present extreme forms of democratic organization. At first the affairs of government were actually administered by the whole body of freemen. Committees were appointed or the "Elders" instructed to look after the general welfare of the plantations between the general public meetings of the freemen.

In Providence Plantation the executive was first repre-

---

[1] "The Hingham Case," see below, 74. [2] See Appendix, II.

[3] "Plymouth Colony Records, Laws," 7,

[4] Bradford: "History of Plymouth Plantations," 90, 156; "Records, Laws," 8. The governor called meetings of the Assembly and presided; governor and Assembly "advised" in public and private over the affairs of the colony and assisted in examining and punishing offenders; courts were held once a month.

sented by five dispensers or selectmen, who were to call quarterly meetings of the town and look after the general public business.[1] At Portsmouth, William Coddington was chosen "judge," and three elders, selected by lot, were to assist him in doing justice and judgment. After the founding of Newport and the transfer to that place of the Portsmouth records, the titles of the officers were changed to governor, deputy and assistants, of which latter there were seven. These officers were all chosen yearly by the freemen assembled in general court, and were invested with the powers of justices of the peace, to hold judicial court once a month.[2]

These towns recognized the sovereignty of the king, but, without commission from any authority possessing legal jurisdiction over the territory, they assumed the right and power of organizing themselves independently into bodies politic.[3] The settlers at Warwick, on the other hand, refused to organize a government because they held that so long as they were loyal English subjects they had no lawful right to take such a step, and denied the authority of the other town governments because not legally derived from England.[4]

But this whole question was settled in 1643 by the patent for the incorporation of Providence Plantations, in Narragansett Bay, from Earl Warwick, Parliamentary governor-in-chief of all the colonies in America. This document granted the inhabitants a free charter of incorporation, with full powers to form such a government as they desired,

---

[1] "Records," I, 27.

[2] *Ibid.*, 52, 63, 98, 115.

[3] They were constantly in fear, however, that their jurisdiction would be questioned. This fear was justified when several persons living near Providence offered themselves and their lands to the protection of Massachusetts, which was readily accepted. "Arnold," I, 111. Newport passed a law in 1642, providing that no person should sell land lying within the jurisdiction to any person outside that jurisdiction, on pain of forfeiture. "Records," I, 126, 57, 401.

[4] *Ibid.*, 129.

provided it was conformable to the laws of England and subject to the Parliamentary commission.[1] In 1647 the four towns united to form a government under this patent.[2] The general officers constituted were a president, four assistants, a secretary and a treasurer, all to be chosen yearly by ballot in a general court of elections.[3] Each town had the privilege of nominating one person for president and two each for assistants. The president and assistants were by virtue of their office conservators of peace, and sat once a year in each town as a general court of trials. This court was the most important organ in the government; it had jurisdiction of all important civil cases, disputes between towns and all capital crimes. The president and assistants were subject to trial before the Assembly.[4] In 1650 an attorney general was appointed to be the legal representative of the colony.[5] The president and council might call special meetings of the General Court, but had no voice whatever in making laws.[6]

Connecticut.

The settlements on the Connecticut were chiefly the result of emigration from Massachusetts. A number of inhabitants of Watertown, Newton and Dorchester, becoming dissatisfied with their location, petitioned the General Court of Massachusetts for permission to remove to the Connecticut River. The petition was granted March 3, 1635, and the Massachusetts court appointed six of their number commissioners to the new settlement for one year, with power to "hear and determine in a judicial way" all matters of dispute; "to make and decree such Orders as shall best

---

[1] Hazard, I, 538.

[2] The Convention or Assembly which formed the government declared that it should be "one held by the free and voluntary consent of all or the greater part of the inhabitants." "Records," I, 191.

[3] "Records," I, 148.

[4] *Ibid.*, 191.

[5] *Ibid.*, 226.

[6] *Ibid.*, 236.

conduce to the public good;" and to call general meetings or courts of the inhabitants. The Massachusetts court reserved the right to recall the commission before the end of the year if desirable.[1] At the end of the first year the commission was not renewed, but the government of the settlement was placed in the hands of a general court or meeting, in which the inhabitants were represented by two persons from each community.[2] On extraordinary occasions "committees" of three, in addition, were sent by each town to the court.

In 1639 the freemen of the several towns met and framed the famous compact known as the Fundamental Orders. The executive provided for in this instrument was similar to that of Massachusetts: a governor and council of six magistrates chosen yearly by the freemen in a general assembly or court of elections. Eligibility to the office of governor consisted in being a member of an approved congregation, and of having been formerly a member of the council. Nominations were to be made by each town through its deputies to the General Court; but no governor could serve twice in succession. The governor was given power to issue warrants for the summoning of the courts twice a year, or oftener, if he saw occasion. But the court was independent and could meet without his call should he fail in his duty. As in the other New England colonies, the governor was the presiding officer, with a casting vote in case of a tie, but

---

[1] Hazard, I, 321. Like the founders of Rhode Island, these settlers had no legal title to the land they occupied. In 1631 a patent covering the territory of Connecticut was granted by Earl Warwick, president of the Plymouth Council, to Lords Say, Brook, and others. Hazard, I, 318. In July, 1635, these proprietors granted a commission to John Winthrop as governor of Connecticut, by whom a fort was erected at the mouth of the Connecticut River. The records show that up to the granting of the charter of 1663 the settlers on the Connecticut were constantly in fear that their rights and property would be questioned by the beneficiary of this patent. "Records," I, 266, 568, 573.

[2] "Records," I, 9; Trumbull, I, 64; Palfrey, I, 455.

with no veto or other control over the acts of the court.[1] In 1641 the salary of the governor was fixed at 160 bushels of corn; this was changed in 1637 to thirty pounds sterling.[2]

As in Massachusetts, so in Connecticut, the most important function of the executive was judicial. The governor and council sat quarterly in judicial capacity as "Particular Courts," where were heard all appeals from lower courts, all criminal causes, all civil suits of over 40 shillings value, and all cases involving title to land.[3] It possessed all the authority now held by the county and inferior courts, and for considerable time was vested with such discretionary powers as none of the courts at this day would venture to exercise."[4] This discretionary power of the magistrates went so far as almost to give them control of the verdict of the jury. Juries were allowed to convict by majority, but if the magistrate conceived the verdict not in accord with the facts, "the jury might be sent out a second time, and if the verdict was still unfavorable, the case might be committed to a new jury."[5] In case any of the magistrates were absent from the colony, a particular court might be held by the governor or deputy and two magistrates, or by three magistrates, without the governor or deputy.[6]

The colonists who settled at New Haven emigrated from England under the leadership of John Davenport, without a charter or legal title to the territory upon which they intended to plant. The colony was founded strictly upon religious principles. At the first meeting of the freemen of which record is kept, January 4, 1639, it was noted that the Scriptures hold forth a perfect rule for the direction of all government, and that only church members could be enfranchised freemen. The religious tenor thus imparted continued throughout the history of the colony. Before a

---

[1] This compact has been printed in many places; see Poore's "Collections of Charters and Constitutions."

[2] "Records," I, 69. [3] *Ibid.*, 71. [4] Trumbull, I, 115.

[5] "Records," I, 84, 117. [6] *Ibid.*, 150.

civil government was provided, a church was organized by the choice of twelve men, who in turn were to choose any seven of their number to "begin the church."

It was nearly nine months after this before the organization of a civil government was completed. On October 25, 1639, the records say, the court met and proceeded to abrogate "all former trust for managing any public affair in this plantation, into whose hands soever formerly committed."[1] Then for the first time a magistrate and officers for the civil ordering of the community were chosen. Thomas Eaton was chosen "magistrate" for one year, four deputies were appointed to advise him as a council; a public notary to keep the records of public business, and a marshal completed the list of officers.

Several other settlements soon arose in the vicinity, at Guilford, Milford and Stamford, with an organization similar to that of New Haven. It was not long, however, before the spirit of confederation began to dominate these plantations and by 1643 a union was formed and a constitution agreed upon for the whole jurisdiction. This provided for the yearly election of a governor and deputy governor. These officers, together with two deputies from each plantation, composed a general court, which continued to be the principal organ of the government. It elected all officers for the united government as well as the magistrates for the several towns.[2] In judicial matters the magistrates of each town acted as a court for all cases under twenty pounds value. Appeals from these courts, as well as all more important cases, were heard by the "Court of Magistrates for the Jurisdiction." In 1644 a council of war was appointed, consisting of the governor and magistrates and the captain and lieutenant, to which was entrusted all military affairs.[3]

Though the constitution provided for yearly election of

---

[1] "Records," I, 20. [2] *Ibid.*, 114.
[3] *Ibid.*, 135, 167, 484.

officers, the same results followed as in Massachusetts. From the founding of the colony in 1657, Mr. Eaton held the office of governor continuously, the deputy governor for the larger part of the same period being Mr. Goodyeare. Add to this the fact that Eaton and Goodyeare were repeatedly chosen commissioners to the New England Confederation, and one may realize the important part played in the administration of the colony by these men. Closely associated with Eaton was John Davenport, the spiritual leader and adviser of the colony. These two men had been schoolmates together at Coventry, England, and each early manifested the talents later displayed in their work at New Haven. Davenport became a clergyman, vicar of St. Stephens, and famed as one of the ablest preachers of London. Eaton, soon prospering as a merchant, was elected deputy governor of the fellowship of Eastland Merchants and was sent by that organization to superintend its affairs in the Baltic countries. Both were ardent Puritans and forced to leave England because of the "High Commission" persecutions of Archbishop Laud. Thus fitted for their undertaking, these men brought to the colony the value of practical experience in English law and business, and it is not without propriety that they have been called the "Moses and Aaron of New Haven."

Maryland.

Two types of colonial executive have been described, both of which grew out of the corporation. In one the corporation was dissolved and the appointing power reverted to the king; in the other the corporation moved to the colony where the freemen became the sole constituent source of governmental power. Intermediary between these forms is that in which the controlling agency was neither king nor freemen but the proprietor, a semi-royal feudal tenant who himself exercised the executive power

within the colony or delegated it to officers appointed and instructed solely by him.[1]

The charter for Maryland granted to Lord Baltimore in 1632, vested in him a governmental jurisdiction, complete and absolute with but two exceptions. On the side of the king, he was limited by a clause requiring allegiance and fealty in behalf of his province. But this restriction was for practical purposes nullified by two circumstances: the laws enacted with the proprietor's authority were to be valid without any sanction by the king; and there was no method provided by which the ordinary governmental acts of Lord Baltimore in the colony could be officially taken note of by the English government.[2] On the side of the colony, the proprietor was limited by the provision requiring the assent of the freemen in the enacting of laws; otherwise, he was free to organize the government in whatever manner he choose. But again, two conditions might practically nullify even this limitation. They are as follows: the proprietor was vested with the power of issuing ordinances to an unlimited extent, provided they did not deprive any person of life or property; secondly, the charter contained no clause fixing the qualifications requisite to the status of freemen, nor touching the time or manner of their assembling for legislative purposes. Thus the political status of the colonists, as well as the constitution of any assembly for legislation, were left entirely to the determination of the proprietor; and at the same time

---

[1] Legally, the proprietor of Maryland was a count palatine and his territory a palatinate. In one case at least he pleaded this character of his grant as justifying his royal jurisdiction. His grant was modelled on the palatine jurisdiction of the Bishop of Durham, one of the two greatest tenants of the king since the Norman Conquest. "Archives of Maryland," Assembly, 264.

[2] "Archives," Council, 17. Here are given the objections raised by the Privy Council to the granting of such a large scope of power to Baltimore. Chalmers: "Annals," 203.

he was given a mode of legislating without consulting the freemen at all.

The latitude left to the judgment of the proprietor in these matters, together with the powers expressly conferred upon him, gave him an almost royal jurisdiction. He was granted full and complete judicial authority, empowered to levy war and conclude peace, to exercise martial law as fully as any captain general of an army, to levy taxes direct and indirect, to grant out land to be held of himself and not of the king, in opposition to the statute "quia emptores," and to erect manors with courts baron. Indeed, had the proprietor taken up his residence within the colony, we should have been compelled to regard the executive there not only as practically independent of all restraint from outside the colony, as was the case in Massachusetts, but also as independent of the freemen, so far as concerned the source, scope and duration of authority, a condition which could not have arisen in either Massachusetts or Virginia. But during the period under consideration, the proprietor did not visit the colony in person. The real executive in Maryland is, therefore, to be studied, as in Virginia, as controlled and directed from England, though not by the king.

Leonard Calvert, the brother of the proprietor, was appointed the first governor of Maryland. His first commission and instructions, naming two persons as counselors or assistants, were issued in 1634, while he was still in England.[1] These documents are not in existence, and very little can be determined concerning the character of the government before the commission of 1637 was issued.[2]

This latter instrument renewed the appointment of Leonard Calvert and provided very amply for the constitution of the colonial government.[3] Calvert was made "Lieu-

[1] Bozman: "History of Maryland," II, 26.

[2] It is known that an assembly of the colonists was held in 1635, but none of its acts have been preserved. See Chalmers, 210, 232.

[3] "Archives," Council, 49.

tenant General, Admiral, Chief Captain and Commander of the Province," with all the powers usually exercised by such an officer. These powers, as was usual in the colonies, consisted in a crude mixture of legislative and judicial functions along with executive and military. On the legislative side, the governor was instructed to call an assembly of the freemen in the following January, and empowered to summon similar assemblies thereafter at his pleasure, and to adjourn and dissolve them at will. The commission does not state expressly whether or not the governor and his council were to be members of the Assembly, but it seems to have been understood that such was the intention, for at the first Assembly, in January, 1638, they were present and the governor presided.[1] No mention is made of a governor's veto, but all laws and acts were to be sent to the proprietor for confirmation. Moreover, the governor was vested with the ordinance power in the same form and to the same extent as it was conferred on the proprietor.

In judicial affairs, the governor was instructed and empowered to hear, and finally judge, all civil actions and all criminal cases, except capital, as fully and finally as the proprietor would do if present in the colony. In cases either capital or touching freehold titles, he could act only with the consent of his council, and then only according to laws enacted in the colony. This limitation to laws of colonial origin shows a desire on the part of the proprietor to have matters of importance adjusted in accordance with the peculiar needs and requirements of the colony, rather than transplant wholesale the laws of England, whether or not they were suited to the conditions of life in America. The governor was further given full power to pardon all crimes and offences except high treason.

As high chancellor the governor was entrusted with the keeping of the seal and the passing of all writs and warrants under it. The appointing of minor officers necessary for

[1] "Archives," Assembly, 2.

the government of the province, was in his hands. He was to choose his own deputy to act in his absence, and all the land in the province was subject to his disposal by grants in the name of the proprietor.

By this commission the entire administration of the colony was placed under the control of the governor. For, though assemblies of the freemen were contemplated, the frequency of their meeting and the length of their sitting were matters for the chief executive alone to determine. Not only this, but ample means were provided to the governor, by his ordinance power, for carrying on the government almost indefinitely without consulting the colonists. In short, the privileges and liberties enjoyed by the people in the colony were not due to express and positive provisions either of the charter or of the instructions to the governors, so much as to the simple intention and determination of the proprietor to rule the colony in accordance with the principle of justice and the wishes of the colonists. Thus, while he kept the regulation of assemblies jealously subject to his discretion, as a matter of fact they were called regularly at intervals of one or two years and allowed great freedom in deliberation. In 1638 the process of enacting laws was simplified by giving the veto power to the governor, subject, however, to the proprietor's confirmation. Laws signed by the governor had full validity unless and until rejected by the proprietor.[1] The governor claimed and exercised the right, even after the primary assembly of freemen had been replaced by a system of representation, of summoning certain persons by special writ; but in 1647[2] this menace to the liberties of the freemen was removed by resolving the Assembly into two houses and permitting the representatives of the people to sit by themselves.[3]

[1] "Archives," Assembly, 31; Doyle, 289.

[2] The exact date is doubtful; "Archives," Assembly, 261: Chalmers, 219; Bancroft, I, 257.

[3] "Archives," Assembly, 272.

The constitution of the executive, as thus provided, was not materially altered during the period before the Restoration. New commissions were issued to Leonard Calvert, in 1642 and 1644, in almost the same language as that of 1637, the only change of importance being the more definite and express settlement of the relations between governor and Assembly. The governor was to be "*in* the Assembly" and in the name of the proprietor to assent to the laws passed.[1] The council was increased to five and its members made magistrates with power to arrest and commit to jail.[2]

By these commissions Leonard Calvert was continued in the office of chief executive from the inception of the colony until 1648. During these fourteen years the administration was marked by wisdom and efficiency. For a portion of the period the task of the governor was made especially difficult by the disturbance in England occasioned by the civil wars. Lord Baltimore had at first cast his lot with the royal party, and when Parliament gained the ascendency, Leonard Calvert, fearing the loss of the colony as the result of support to the defeated king, thought it prudent to visit England. There is no evidence that the committee appointed by Parliament to govern the colonies made any attempt at this time to enforce its authority in Maryland, but the absence of the governor and the uncertainty attending the outcome of the civil war, gave opportunity for the lawless and rebellious element to rise in opposition to the government. Returning with a new commission, Governor Calvert at once attempted to reassert his authority and restore order. At first he was not successful, the rebels Claiborne and Ingle driving him from the province. For a time the colony was practically without a government. In 1645 one Hill, acting with the concurrence of the council and assuming to hold a commission from Governor Calvert, summoned a meeting of the Assem-

[1] "Archives," Council, 110. [2] *Ibid.*, 114.

bly. Before it met, however, Calvert, having collected a small force, with the assistance of Virginia restored order and drove the rebels from the colony. The governor hastened to place the government of the province on its proper peaceful basis, and the people welcomed back their former ruler as the representative of order. It is said that his benignant administration never gave anyone cause to complain.[1]

On the death of Governor Calvert, in 1647, the proprietor appointed William Stone to succeed him, with somewhat enlarged powers. In addition to the councillors already named, Governor Stone was permitted to add to the council two or three persons of his own choosing.[2] This was a wise concession. The governor, being present in the colony, was better able to judge of the fitness of councillors than the proprietor. In all subsequent commissions as late as 1660 this one to Stone was cited as the precedent in fixing the powers of the executive officers.

For a short time during the Commonwealth period Lord Baltimore was deprived of the administration of Maryland. On the arrival of the commissioners sent out by Parliament in 1651 to reduce the colonies in the region of the Chesapeake, a compromise was made with Governor Stone by which he was allowed to retain his office until Cromwell should decide whether to confirm Baltimore's charter.[3] The proprietor, however, having recognized the authority of Cromwell, and claiming that his title to Maryland was as valid under Parliament as under the king, violated this agreement by instructing Governor Stone to administer the province in his (Baltimore's) name as before. The result of this hasty action was the deposition of Stone and the placing of the governor's office in commission.[4] Ten men were appointed by the representatives of Parliament to

---

[1] Sparks: "American Biography," Second Series, IX, 27.
[2] "Archives," Council, 201. [3] McMahon, 205, 209.
[4] "Archives," Council, 311.

administer the executive functions, and the oath of allegiance to the proprietor was dispensed with. This government, entirely independent of Baltimore, continued two years.

In November, 1657, Cromwell finally reached a decision by confirming Lord Baltimore in his rights and titles to Maryland. The proprietor at once restored the executive of the province to its former position by renewing his former appointment of Josia Fendall as governor, under a commission similar to that held by Governor Stone. Governor Fendall arrived in the colony in February, 1658, and at once called a meeting of the council, at which he published the agreement made between Baltimore and the representatives of Cromwell. It provided that the commissioners should surrender Maryland to the proprietor on condition that the latter should grant an amnesty to those who had opposed him, and permit them to leave the colony if they desired. These terms having been satisfactorily arranged, the province of Maryland was formally restored to the authority of Lord Baltimore, March 27, 1657.[1]

As the province increased in size the judicial functions of the governor became more important and soon grew to be the chief source of his influence. With his council he constituted the supreme court of the colony, to which appeals were allowed from every inferior court. He appointed all judges and commissioners for the lower courts and for special courts to hear particular cases.[2] In civil cases the jurisdiction of the governor and council was final. Criminal cases, touching life or limb, were left to the decision of a jury of twelve. "As admiral the governor was to preside over the admiralty court, as chancellor over the chancery court, and by special commission over the so-called pretorial court of St. Mary's."[3] He was also to act as judge in the county court of St. Mary's with commissioners appointed by the proprietor.

---

[1] "Archives," Council, 333.

[2] "Archives," Assembly, 147, 182. [3] Doyle, 298.

Considerable correspondence was carried on between the proprietor and the governors. Many commissions and letters of instruction were issued to the various minor officers, as secretary, keeper of the records, surveyor, etc., the appointment of whom was carefully retained by the proprietor. In fact, Lord Baltimore showed himself at all times vigilant that his control of the administration of the province should in nowise be weakened. He was wealthy, tolerant and possessed a marked ability; and his time, his talents and his riches were freely used for the welfare of his colony. Yet he belonged to the court party, was accustomed to centralized power, and the traditions of his family were those of an hereditary aristocracy. These institutions he would have transplanted to America. It was only by the constantly aggressive attitude of the Assembly and its determined resistance to centralization that the rights of that body were more and more clearly recognized and defined, and thus the scope of the governor's power gradually narrowed.

CHAPTER III.

ENGLISH ADMINISTRATION OF THE COLONIES.

The statement has been frequently made that the development of the colonies and the form which their governments assumed during the first half of the seventeenth century, were due to the neglect rather more than to the care of the English government; that the Stuart kings were too busily occupied with devising means to maintain their independent position in England to successfully carry out any extensive colonial policy; and that such a policy was conceived of only after the Restoration of Charles II.[1]

While these statements are partially true in a very loose and general way, they cannot be taken as expressing the whole truth as regards the relations between England and the colonies, or as accounting for the so-called colonial policy which, it is claimed, originated after 1660. There

---

[1] Doyle: "Virginia, Maryland and the Carolinas," 314. Schouler: "Constitutional Studies," 15. Doyle says, "The Restoration marked the beginning of a definite and connected policy which aimed at treating the colonies not as isolated provinces to be dealt with in a spirit of capricious favor, but as a connected whole, to be administered on fixed principles." He then refers to the independent sovereignty of Lord Baltimore as an anomaly against which this new policy was a protest. Yet we know that the Restoration brought a fresh recognition of Baltimore's rights. Doyle, in the above statement, refers to the commission that was appointed in 1660. But this commission was entrusted with no powers and represented no principles not already entrusted to similar commissions before the Restoration.

was a colonial policy before that date which was only continued and enlarged upon afterward until, in the first quarter of the eighteenth century, the colonial department was placed in charge of one of the secretaries who had a seat in the ministry. The political policy which prevailed in the seventeenth as well as the eighteenth century, was that of regulating, systematizing and centralizing the administration of the colonies by bringing their executive officers into closer dependence upon authorities in England. It developed from the necessity of checking the tendency on the part of the colonial companies toward independence and self-control, and this tendency was manifested almost as soon as the companies had succeeded in permanently establishing colonies. Two facts explain why this tendency could cause the English government difficulty. In the first place, the statesmen who drew up the charters thought merely of making regulations for commercial undertakings. They had no conception of the far-reaching consequences of their acts; the rise of a few trading posts into an empire was not anticipated. Therefore, the grants of territory and jurisdiction were so extensive and liberal that, as the colonies grew in size there were no means by which, in accordance with their charters, the companies could be adequately controlled. The second fact is the great distance between the colonies and England. A corporation resident in England but whose property interests and business connections were entirely with a body of planters and colonists three thousand miles across the sea, could not be handled with the same ease as a merchants' guild located in London; much less could a corporation which was itself resident in the distant colony. Because of these conditions there was adopted by the English government this plan of centering all executive control of the colonies in the hands of one body, and thus enforcing an uniform and effective system of administration. And to find the origin of the colonial policy in its political aspect, we must go back to the first instance when this was attempted.

Originally the relations between England and the colonies were conducted entirely through the agency of the Privy Council along with the domestic and foreign business. But as the colonies increased in size and the colonial questions became more important, the time and attention required for this work grew to be more than the Privy Council could devote to it. That body then began to delegate colonial business to committees and boards composed either of its own members or other parties interested in the colonies and familiar with their needs. Appointed at first for some one special purpose and with a definite end in view, these boards soon became permanent bodies entrusted with the general oversight and control of all colonial relations.

The first of these special commissions was appointed in 1623 by the Privy Council at the king's command, with a view to enquiring into the too liberal and democratic government of the colony of Virginia by the Virginia Company.[1] It was composed of Sir William Jones and six others, who were given "full Power and Authoritie to view, peruse and consider all letters-Patent, charters, Proclamations, Commissions and other Acts; all Warrants, Records, Books, Accounts, Entries and other Writings whatsoever concerning the said Colonies or Plantations, or concerning the several Companies or Corporations;" to determine whether such charters had been violated; to investigate all expenditures of money in the colonies; to examine the laws made and the mode of government in use; to summon and examine under oath all witnesses necessary for the above; "to certify unto the said Lords and others of the Privy Council, from Tyme to Tyme, your proceedings therein; to the End that such further order may be given therein as shall be fitt." [2]

[1] "Colonial Papers," April 17 and 18, 1623. The commission is printed in Hazard, I, 155.

[2] The real object of this commission was undoubtedly to arrest the democratic tendency of the Virginia Company, which had been mani-

During the time that this commission was conducting its investigation the Privy Council continued to transact colonial business in its regular sessions, the king frequently urging the councillors "diligently and daily to attend to the business of Virginia until it be fully agreed and concluded."[1] Rules were set down "for the bettering of the government in Virginia," pointing out reforms and improvements to be made, and directing the officers in the colony to be attentive to the instructions of the Privy Council in all things.[2]

These proceedings continued until the twentieth of October, 1623, when the commissioners reported adversely to the colony, representing its condition as very unfavorable.[3] Accordingly, after an opinion regarding the points of law involved had been delivered by the attorney general to the king, the Privy Council ordered the Virginia Company to surrender its charter.[4] By the execution of this act the corporation lost all control of the colony, though it continued for some time in possession of certain property. From this time the king assumed control of Virginia. It was his intention to return to the double council system, one in London, with power to appoint and direct another in the colony.[5]

This plan, however, was not carried out. Instead, a committee of the Privy Council was appointed, June 24, 1624, to advise with the king concerning the best mode of governing the colony.[6]

This committee was composed of Lord Mandeville, presi-

---

fested by the election, against the king's wish, of Sir Edwin Sandys to the treasurership in 1619. Stith, 159.

[1] "Colonial Papers," May 22, June 30, 1623.

[2] *Ibid.*, July 2 and 3, 1623.

[3] *Ibid.*, October 8 and 15, 1623. Also the Preamble of the Commission to Wyatt; Rymer, XII, 618.

[4] "Colonial Papers," July 31, October 17 and 20, 1623.

[5] *Ibid.*, October 8, 1623.

[6] *Ibid.*, June 24, 1624, 62.

dent of the Privy Council, and over fifty other lords, counsellors, aldermen of London and merchants.[1] They were given full power to do anything which the late Treasurer and Company of Virginia might have done; any six of them could give orders for the seizing of the public property of the company, sending supplies to the colony, the management of the government and the regulation of trade and traffic. They were to continue in power during the king's pleasure, and were to take charge of the seal and all records and books of the company. This committee met every Thursday at Sir Thomas Smith's house.[2] Most of the business of the colony passed over into its charge, although the Privy Council continued to be consulted on important matters.[3]

The appointment of a standing committee in the Privy Council with such powers and instructions clearly indicates that the king was determined not to allow the colony again to pass from his control. The affairs of the late Virginia Company had not, however, been definitely settled as yet, and there were many persons who were still petitioning for its re-establishment.[4] It was especially to investigate the claims of these petitioners and to consider ways and means for the management of the colony, that the king, in 1631, appointed a new commission, consisting of the Earls Dorset and Danby and twenty-one others, and with powers very similar to those of the commission of 1623. The commissioners were especially instructed, however, after having gathered all the information possible, to submit their conclusions to the king in the form of specific propositions for the government of the colony.[5] They

---

[1] The commission is given in Hazard, I, 183.

[2] "State Papers," Colonial, July 3, 1624, 64.

[3] "Colonial Papers," July 18, 26, 31, November 28, December 13, 1624; February 23, April, 1625.

[4] *Ibid.*, April, 1625; August 14, 1633; May, 1637.

[5] *Ibid.*, May 24, 1631. The Commission is printed in full in Hazard, I, 312.

were authorized also to take cognizance of the petitions and appeals from the judgment of the courts in Virginia.[1] After many "serious consultations" a report was made on the first of November, 1631, recommending that the charter be renewed, providing for a council in London and a governor and council in Virginia, both of which the king should appoint, and that the Virginia Company be re-incorporated and all its powers, rights and privileges respected.[2] This report, however, was not adopted, the chief consideration against it being that the Virginia Company had previously spent most of its time "in invections one against another." [3]

Up to this time the Privy Council had been the real directive and controlling authority, the commissions appointed having had, for the most part, only power to advise and recommend. But in 1635 the English statesmen began to take a more comprehensive view of colonial affairs. A permanent governing board was now appointed, having jurisdiction over all the settlements in America, to which was entrusted full power to revoke charters, enact laws and establish courts. This commission included many of the highest officers of state. At its head was William Laud, Archbishop of Canterbury. Among its members were the Lord Keeper, the Archbishop of York, the Lord High Treasurer and eight other high officials of state. Its instructions practically gave it the sovereign powers of "making laws and orders for the government of the English colonies; of imposing penalties and punishments for ecclesiastical offences; of removing governors and requiring an account of their government; of appointing judges and magistrates and establishing courts; of hearing and determining upon all manner of complaints from the colonies; of judging of the validity of all charters and patents, and of revoking all those unduely or surreptitiously obtained."[4]

[1] "Colonial Papers," August 20, 1631.
[2] *Ibid*, November, 1631.
[3] *Ibid*.
[4] *Ibid*, 1635.

The immediate object of the creation of this commission was to check the growth of Puritanism, which had been greatly fostered in the colonies by the increased immigration of non-conformists from England during the reign of Charles I. It was the policy of that sovereign, backed by such men as Laud and Strafford, to subject the entire realm to the immediate surveillance and dictation of the king. By placing the entire colonial department under the jurisdiction of one body with power to abolish or change at will any existing institution, it made possible an obnoxious and arbitrary interference with every detail of colonial business. It was intended that the executive in the colonies should be made to conform to English principles and be subject to direct control from England. This was already true of Virginia and Maryland, as we have seen, but not of Massachusetts. It was the purpose of the commission to destroy the Massachusetts system and set up an uniform method of administration throughout the colonies.

The commissioners at once set about putting these principles into operation by setting up a governor-in-chief over all the New England plantations. New England was divided into twelve provinces, a council of ten appointed for each, and Sir Ferdinando Gorges made governor general, and Captain John Mason vice-admiral over the entire region.[1] This project, however, like many other colonial dreams, was doomed to failure. Owing to the mismanagement of the commissioners and the determined opposition of the colonies it was never put into practice.[2] On this occasion, as on similar occasions subsequently, the General Court of Massachusetts refused to admit of any change in their system of government. In that colony the public policy was shaped not by the governor as in Vir-

---

[1] Winthrop, I, 192, 276, 269; "Colonial Papers," June 22, October 1, November 26, 1635; July 23, 1637.

[2] Chalmers, 162.

ginia and Maryland, but by the Assembly of the freemen.[1] The colonists desired to keep their chief executive independent of all authority in England, because they saw that by that method alone could their own supremacy be maintained. When a demand was made for their charter the court answered that they did not wish to surrender it because they would "be obliged to receive such a governor and such orders as should be sent" to them.[2]

The result of this opposition to the plan of the commissioners was a quo warranto proceeding against the charter, which was only staid from execution by political complications in England.[3] In other words, the commission of 1634, the object of which was to establish a uniform and centralized system of administration throughout the colonies under the direction of the king's officers, failed to accomplish its purpose because of the king's inability to maintain his independent position in England. The New England system was thus given a new lease of life.

Though this project had failed the commissioners continued to transact colonial business along with sub-committees of the Privy Council until the outbreak of the civil war.[4] In 1643 Parliament, having gained supremacy in England, assumed the administration of the colonies and appointed a new board of commissioners, at the head of

[1] The demand for the surrender of the charter was first made to the governor and magistrates, who replied "that it could not be done but by a General Court, which was to be holden in September next." Winthrop, I, 163.

[2] *Ibid.*, 323, 329. The answer and petition of the court are given in full in Hubbard, "History of New England," 268.

[3] Proceedings were carried on against the governor and corporation of Massachusetts Bay in the Court of King's Bench from Trinity term, 1635, to Easter term, 1636, ending in a judgment against the corporation and an order from the Privy Council requiring the attorney general to call in the charter. "Colonial Papers," May, 1637. The letter from the commissioners, citing these proceedings and demanding the charter, may be found in Hubbard, 268.

[4] "Colonial Papers," July 15 and 27, 1638; July 30, August 10, 1639.

which was the Earl of Warwick, with the title Governor-in-Chief and Lord High Admiral of all the Colonies in America.[1] In granting power to this board no departure was made from the earlier custom. It was instructed to "provide for, order and dispose of all things which it should from time to time find most fitt to the well-governing of the said plantations." This grant included the power of appointing, instructing and removing all governors, councillors and other officers. The colonies were ordered not to receive or recognize any commander or agent but such as had been approved by these commissioners. Under this authority Warwick and his associates issued patents for lands, provided for the maintenance of religion, appointed governors and regulated trade.[2] This arrangement continued until the establishment of the Commonwealth in England, when the Privy Council was replaced by the Council of State appointed by Parliament, February 13, 1649.[3] From this time down to the Restoration colonial business passed through the hands of this council, or its "committee for America," [4] or the commissioners of admiralty,[5] subject at all times to the instructions and orders of Parliament itself.[6]

The relations between England and the colonies of Virginia and Maryland during the Commonwealth period have been referred to in describing the changes in the executive office at that time.[7] In Massachusetts no change was made on this account, but the relations between the colony and Parliament became interesting and significant. On

---

[1] Hazard, I, 533; Chalmers, 175.

[2] "Colonial Papers," November 24, 1643; December 10, 1643; March 14, October 23, 1644; December 11, 1646.

[3] Gardiner: "Documents of the Puritan Revolution," 261.

[4] "Colonial Papers," August 13, December 1, 1657.

[5] *Ibid.*, April 17, October 19, 1650.

[6] For the acts of Parliament respecting the colonies between 1640 and 1656, see Hazard, I, 633.

[7] See *ante*, 27, 50.

the outbreak of the civil war the General Court, being popular in its sympathies, at once recognized Parliament and threw its influence on the side of that body.[1] Nevertheless, when Parliament had won its battle the General Court refused to admit appeals to it, on the ground that their charter, in conferring the right to correct, punish, pardon, rule and govern, implied a "perfection of parts" and a "self-sufficiency not requiring any other power in the way of a general governor to complete the government." [2] They defined their allegiance as similar to that of the Hanse towns to the Empire, or Normandy and Gascony to France, where there was no dependence in point of government. They refused to accept a new charter from Parliament in 1646, or from Cromwell in 1655, because it would mean a surrender of their old one.

When, however, the appeals of Samuel Gordon and William Vassel brought the question of jurisdiction of Parliament to a direct issue, the General Court, while protesting, found it convenient to recognize the authority of Warwick and his associates and to obey their orders.[3]

This is as far as Parliament went in asserting its power over the colony. In 1647, after an explanation of the state of the case by Mr. Winslow, the colony's agent in England, the commissioners declared that they did not intend by their former action to encourage appeals or restrict the jurisdiction of the colony.[4] After the establishment of the Commonwealth, Cromwell, even while urging the colony to accept a new charter, did not attempt to interfere in domestic affairs or molest the form of government.[5]

---

[1] "Records," II, 69.

[2] Winthrop, II, 341.

[3] *Ibid.*, 345; "Records," II, 242. For the Gordon Case, see "Records," II, 51; Winthrop, II, 171, 319.

[4] Winthrop, II, 389. The commissioners declared their intention thus: "To leave you with all that freedom and latitude that may in any respect be duely claimed by you."

[5] Barry, I, 344. It is probable that Cromwell interfered in Parliament in behalf of the colony. There is no positive evidence of

CHAPTER IV.

THE RELATIONS OF THE EXECUTIVE TO THE LEGISLATIVE ASSEMBLIES.

Institutionally, the governor may be regarded as the intermediary link between the colonial legislatures and the English government. Drawing his authority from the latter he was instructed, or at least empowered, to use it to check, direct, or dispense with the former, which were purely popular bodies representative solely of colonial interests. In the charters themselves there was little or no protection of the colonists against executive powers when exercised by the corporation or proprietor to whom they had been granted. In Lord Baltimore's charter for Maryland there was the provision requiring the assent of the freemen to the enacting of laws. In Massachusetts, though there was no such provision in the charter, the same advantage was more firmly secured by the removal of the corporation to the colony and its expansion of the latter into a self-governing state. In Virginia there was no such limitation until the Assembly was constituted in 1619. These fundamental limitations were not sufficient in the eyes of the colonists. There soon grew up a strong popular opposition to the political prerogative of the executive; to the manner in which it was exercised, as well as to the mere fact that power was so concentrated that it might be exercised to the disadvantage of the colonists. This opposition gradually succeeded in securing an independent field of jurisdiction for the popular legislatures and in reducing

this, but it appears from a letter of his to Colton and in his proposals to remove the colony to Jamaica.

the scope of power of the executive by securing recognition to acts making certain definite limitations on his prerogative.

The exact character of these relations between governor and Assembly in the seventeenth century is a subject concerning which there still exists some confusion. Thus it is claimed that down to 1688 the people held fast to their liberties and were not in general disturbed in their assemblies, but that, beginning with the English Revolution, a system of executive tyranny began to be enforced,[1] commercial oppression was more rigidly applied and the governors attempted to overthrow colonial liberties by interfering with rights and privileges of the assemblies, which resulted in what is commonly referred to as the eighteenth century bickerings between Assembly and governor.[2] But it is an error to regard these disputes as beginning with the Revolution or as especially characterizing the eighteenth century. The contest began as soon as the colonies had grown to sufficient size to make the method of their government a matter of importance. It was occasioned by two conditions common to the colonists from the first. In the first place, the location of the colonies in a new country, far away from any strong government which could exercise authority over them, fostered the growth among the planters of that natural feeling of resentment toward any external authority, and of that desire to have a controlling hand in their own government which always characterizes pioneers who advance beyond the bounds of civilization into a new and unexplored country.

But, in the second place, there was also a more vital reason for the antagonism. There is evidence that the colonists recognized in the governors the representatives, direct or indirect, of that absolute personal rule which they had

---

[1] Landon: "Constitutional History," 24.

[2] Thwaites: "The Colonies, 1492–1750," 271–3.

known in England; that they claimed the right to limit this rule by means of popular assemblies "after the manner of Parliament;" and that in this way they continued on this side of the Atlantic the contest for popular government which was being waged on the other side of the sea. The colonists were familiar with the great parliamentary struggle then going on in England. Their demands show that the issues were for the most part the same as those which were being fought for in the mother country. The right to be taxed only with their own consent; the right to have assemblies called at regular and fixed intervals, and dissolved or interrupted only at their own consent; the right to be ruled, not arbitrarily, but according to laws made by themselves or the known and established usage of England, were points on which the popular assemblies began to insist almost from their first meeting. They were given greater emphasis when those assemblies imitated the example of parliamentary supremacy after the execution of Charles I, and after the Restoration of 1660 they were demanded with constantly increasing vigor and firmness.

In Virginia, almost as soon as the legislative Assembly had been organized, it began to assume control of the budget. The first known act imposing a definite limitation on the governor was that of 1624, to prohibit the levying of any tax or impost on land or commodities without the consent of the Assembly, and providing that such a tax when collected should be expended only as appropriated by the house. Another act, passed at the same time, forbade the governor to force any person from private labor for his own or public service.[1] This power had previously been exercised by the governors in an offensive and arbitrary manner for building forts and public houses.[2] The important limitations thus placed upon the executive were later insisted

[1] Henning, I, 124.

[2] Chalmers, 66, 77.

upon by the burgesses, the laws being re-enacted successively in 1631, 1632 and 1642.[1]

The sessions of the Assembly were not regular for some years after 1624. There seems to have been no further attempt to restrict the governor until the administration of Sir John Harvey in 1635. Before examining the relations between this governor and the Assembly, however, a word must be said as to his personal character, which was not such as to make him popular among a free people. By contemporary historians he is described as extortionate, unjust and arbitrary; issuing proclamations without regard to the legislative rights of the Assembly, disbursing colonial revenues on his own authority, and appropriating fines to his own use. Of his personal address it is said that he was "so haughty and furious to his council and the best gentlemen of the country that his tyranny at last grew unsupportable."[2] In addition to this, it was urged that Harvey was a thorough-going courtier who prized the favor of his partisans and patrons in England more highly than the welfare of the people he was sent to govern.[3]

The first occasion of disturbance between this governor and the Assembly arose in connection with the perplexing intrigues of Claiborne. This man, a Virginia colonist, armed with a patent from the king, had established a trading post on Kent Island, in the Chesapeake Bay, within the jurisdiction of Maryland. Having refused to submit to the authority of Baltimore, he was attacked by the latter's officers and, with the active assistance of Governor Harvey of Virginia, sent as a prisoner to be tried in England. The legal right in the matter seems to have been on the side of Lord Baltimore, though there was much confusion over the subject. The king had ordered Baltimore not to disturb the inhabitants of Kent Island; the Privy Council had decided that Baltimore must be protected in his charter rights.[4]

---

[1] Henning, I, 171, 196, 244.
[2] Cooke: "Virginia," 165.
[3] Bancroft, I, 137.
[4] Winsor, III, 527.

Apparently, however, Harvey's action was not determined by the justice of the question but by the desire to gain the good-will of Baltimore and through him of the entire court party.[1] For his "service" he gained the much-prized thanks of Baltimore, was commended by the king for his "very acceptable" service, and received a note from the secretary of the Privy Council complimenting his "dutiful obedience to his sovereign's commands."[2] This conduct was regarded by the colonists of Virginia in the worst possible light and won for the governor almost universal disfavor. It was not long before another opportunity was given for this discontent to break out in open revolt. In 1634 the king had granted a commission to Thomas Young to conduct an exploring party into the uninhabited parts of Virginia.[3] While executing this commission Young had occasion to employ a ship's carpenter for repairs in Virginia. Trouble arose in settling with the workmen; the case was carried before Governor Harvey and was decided in favor of the king's deputy and against the Virginian.[4] This was too much for the colonists. A meeting of the council was held, the Assembly was summoned, and Harvey was deposed and sent to England for trial on the charge of treason.

Governor Harvey was charged with having usurped power in four ways: by acting without the assent of the council; by illegally restraining the trade with Maryland; by concluding a treaty of peace with the Indians, and by instigating the Marylanders to rise against the inhabitants of Kent Island.[5] Doubtless he was guilty, in spirit at least, of all these charges, yet it is impossible not to recognize here an attempt on the part of the Assembly to

---

[1] Eggleston, 249.

[2] "Colonial Papers," September 15, 18, 29, 1634.

[3] *Ibid.*, September 23, 1634.

[4] *Ibid.*, July 10, 1634.

[5] Matthews to Wolstenholm, "Colonial Papers," May 25, 1635, 208.

invade the domain of legitimate executive functions. Two of the acts charged against the governor, those regarding trade and the relations with the Indians, were especially sanctioned by his commission.[1] To charge that he was exceeding his power in performing them indicates the advance on the part of the Assembly to a new position.

It is interesting to compare the charges against Harvey with those brought against Winthrop by the General Court of Massachusetts.[2] In each case there was jealousy on the part of the popular party of the power centralized in the hands of the executive and an attempt to invade it. In both Massachusetts and Virginia, behind the personal element in the struggle, there was the contest between two theories of government. Without doubt the religious differences and the unsavory character of Governor Harvey were factors in the dispute, but this does not lessen the significance of the case. Governor Harvey himself charged the disturbance to certain letters of Sir John Wolstenholm advocating a reorganization of the Virginia Company and to the mutinous conduct of John Pott, because he, Pott, had been superseded in the government by Harvey.[3] But, as was to be expected, regardless of the merits of the case, the governor was vindicated by the king. Harvey was the "king's officer," appointed and commissioned by the royal command, and the king could not permit him to be "thrust out" by the burgesses of a plantation. He was recommissioned governor with the same powers as before, at the request, it is said, of Lord Baltimore,[4] and sent back to the colony in one of the king's private vessels,[5] while, on the other hand, five of his accusers were sent to England for trial, and one, at least, was for some time imprisoned in the Fleet.[6]

---

[1] Rymer's "Foedera," Tome 20, 3; see also 14, 18, above.

[2] See above, 37.

[3] "Colonial Papers," July, 1635, 212. [4] Bancroft, I, 137.

[5] "Colonial Papers," February 15, 1635; April 2, May 17, 1636.

[6] *Ibid.*, December 22, 1635.

After this triumph of the executive there was no open strife between the two branches of the government for some years. Harvey continued governor until 1639 when he was replaced by Sir William Berkeley. This officer, important in the history of the colony before as well as after the Restoration, was a thorough royalist courtier. He was descended from a family which had figured prominently in English nobility since the Conquest. His brother was ambassador to Sweden under Charles I, and Sir William himself had been one of the gentlemen of the privy chamber to that sovereign. Though his haughty pride and intolerance drove many of the best inhabitants from the colony, as a law-giver and administrator he was prudent, just and diligent. He was the author of most of the best laws of the colony.

During the struggle between king and Parliament in England, the royalist party in Virginia, led by Governor Berkeley, seemed to represent the entire interests of the colony. As soon, however, as the commissioners of Parliament had assumed control of the colony, in 1650, and opportunity was given for an expression of popular will,[1] it was found that a majority of the inhabitants were not averse to parliamentary supremacy. This popular party was raised to power by the commissioners and an agreement made with them which was so favorable to the colonists that it has been likened to a compact between equals.[2] But the relation between the two branches of the government was now reversed. The executive which before had been independent and supreme, was made entirely subordinate to, and dependent on the Assembly. The right and power of electing and removing all executive officers, including governor and council, was transferred to the legislative body. By this simple act the Assembly became the paramount organ of the government and remained so during the Commonwealth period.[3]

---

[1] See above, 27. [2] Henning, I, 497, 499. [3] *Ibid.*, 503, 530.

It was the desire of the governor to regain the independence thus lost that led to the significant contest for sovereignty within the colony which occurred in 1658. In March of that year, before the Assembly had adjourned, the governor and council declared it dissolved and issued an order to the speaker to dismiss the burgesses.[1] The Assembly immediately answered this manifesto by a declaration that the action of the governor was unlawful and demanded that his order be revoked. This demand of the house was allowed by the governor, who, however, proposed to refer to the Lord Protector of England the question as to the legality of the course he had taken. This brought the whole matter to an issue at once. For the colonists saw, as the colonists of Massachusetts had seen, that the reference of such questions to England for decision must in the end be inimical to their privileges. The burgesses accordingly passed a resolution declaring that they were not dissoluble by any power in Virginia but their own. To demonstrate their supremacy they deposed the governor and council and then re-elected them. They sent an order to the sheriff of James county and the sergeant-at-arms of the house, requiring them not to execute any warrant, order or command unless signed by the speaker of the house. The governor was compelled to submit and the triumph of the legislature over the executive was for the time being complete. It was, however, of short duration, for at the Restoration the control of the executive passed again to the Privy Council and its former supremacy was re-established.

In studying the relations between the governor and the General Court in New England, consideration must be taken of the fact that the two departments there rested on the same basis; in other words, were co-ordinate; a fact which is not true of either Virginia or Maryland. In the two colonies last mentioned the executive officers were

[1] Henning, I, 497, 499.

appointed and commissioned in England, while the legislative assemblies, not being provided for in the charters,[1] were organized and controlled by the governor. In Massachusetts, on the other hand, Assembly and governor were both appointed by and responsible to the same source, the colonists; and the Assembly had in theory, through the expansion of the company into the commonwealth, as complete a constitution in the charter as the executive department. This relation of the two departments in Massachusetts affected very materially the position they assumed in the colony.

The details of the early relations between governor and General Court in Massachusetts are obscure. Only enough is known to determine the general character of a sharp contest in which the governor and council strove to maintain their position against the aggressions of the popular body. The first governor represented to considerable extent the idea of centralized power. He was chosen by the council; he could call meetings of the General Court in which he had a seat and over the actions of which he had virtual control; and with his council he could levy taxes, make and enforce laws.[2] Very soon, however, the freemen began to grow jealous of this power and encroached upon it. Their first move was in 1632 when it was enacted by the General Court that the governor should be elected by the whole body of freemen.[3] Two years later the law making and taxing power was assumed exclusively by the General Court, with the provision that that body could not be dissolved without its own consent.[4] In 1639 the independence of the court was still further assured by an act enabling it to meet at regular intervals, even should the governor fail to issue the summons. Only once, in 1645, did a governor attempt to exercise the power of dissolving the

[1] The charter for Maryland required the assent of the freemen in legislation, but provided no means for ascertaining that assent.

[2] "Records of Massachusetts Bay," I, 79.

[3] "Records," I, 95.

[4] *Ibid.*, 118.

General Court, and he was then defeated, the court simply refusing to obey and the governor having no means to enforce his command.[1]

The question as to the part which the governor and council should play in the deliberations of the General Court was a prolific source of dispute. It does not appear that the governor personally ever possessed a veto on the acts of the court. His power in that body during the early years of the colony was due to the personal influence which he, as the most important officer in the colony, surrounded and supported by the smaller court or council of assistants, by whom he was then elected, could assert over the irregular and unorganized body of freemen. But after it had become lawful for the freemen to send deputies to represent them at the General Court, it was enacted that, while the magistrates and deputies should continue to sit together in one body, every law must receive the assent of magistrates and deputies separately.[2] This was in 1636. In 1641 the governor was given a casting vote in case of a tie in the General Court.[3] This was doubtless to obviate the difficulty arising from the system of arbitration provided in the law of 1636 for cases of disagreement between the deputies and magistrates.[4] When, however, the deputies and magistrates were organized into separate houses, an absolute equality as regards legislative power was established between them.

Thus after possessing an almost complete control over the meetings of the court and the making of laws, the governor and his council were restricted on the legislative side to the functions of one co-ordinate member of the law-

---

[1] "Records," III, 27.

[2] *Ibid.*, I, 170.

[3] "Laws, D. P. and S.," 90.

[4] And for want of such accord the cause shall be suspended; and if either party think it so material, there shall be forthwith a committee chosen to elect an umpire, who together shall have power to hear and determine the cause in question. "Records," I, 170.

making body with no control whatever over the other. Even this position was threatened in 1645 by the appointment of a committee to consider some way by which the negative vote exercised by the magistrates might be tempered; and in 1641 the judicial prerogative of the governor was intrenched upon by the passage of an act which transferred the pardoning power to the General Court.[1]

These changes had not been admitted without a struggle. There was an almost constant friction between the magistrates and the more democratically inclined of the colonists. In 1632 Governor Winthrop was formally charged with having exceeded the limits of his power, which, it was held, was not different from that of any of the assistants, except in that he could call meetings of the General Court. Winthrop, on the other hand, contended that the office of governor entitled him to all the powers and privileges that belonged to a governor according to the common law or had been conferred by statute.[2] His accuser cited seven cases in which he was charged with exceeding his authority, the chief of which were: removing the ordnance and erecting a fort at Boston; illegally granting licenses for trade and settlement; attempting to alter sentences passed by the court.[3] These charges were all admitted and explained, or refuted to the satisfaction of the court, and the matter allowed to drop.

Jealousy between the two branches continued, however, and became even more pronounced after the separation of the General Court into two houses.[4] In 1644 an act was passed by the lower house, the object of which was to practically destroy the influence of the governor and the result

[1] "Records," III, 11.

[2] Winthrop: "History of New England," I, 99.

[3] *Ibid.*, 102.

[4] When the question of sending deputies to the court was first proposed, Winthrop treated the question as in his power to settle; he proposed that, at the court's order, he would call meetings of deputies to revise the old laws, but that they could not make new laws. *Ibid.*, 153.

of which would have been to seriously cripple the executive power by placing it in commission. It provided for the appointment of seven magistrates and three deputies, who were to have full charge of the government of the colony during the intervals between the sessions of the General Court.[1] The upper house rejected this measure on the ground that it tended to overthrow the foundation of the colonial government.[2] At the next session of the court the matter was referred to the elders for decision. They naturally took sides with the magisterial body, and the result was a complete vindication of the governor's position.[3]

The next year, 1645, a dispute of greater import arose regarding the magistrate's authority. The magistrates undertook to interfere in a local dispute over a contested election and to settle the matter temporarily pending the next meeting of the court.[4] The right to do this was hotly denied; some of the inhabitants asserted that they would die at the sword's point if they had not the right freely to choose their own officers.[5] This incident gave occasion for a general outburst of indignation and discontent at the magisterial system of administration, Winthrop, the deputy governor, being especially obnoxious to the extreme demo-

---

[1] Winthrop, II, 205.

[2] The magistrates contended that only the freemen in Court of Election had the right to create general officers; and that in the commission, four of the magistrates were not mentioned. The deputies held that the governor and assistants had no power out of court but what was given by the court; the magistrates answered that they had powers of government before they had any written laws or had kept court, and that *"to make a man governor over a people, gives him by necessary consequence the power to govern that people;"* they held that they were a standing council by election and hence empowered to act in absence of the court. The deputies then changed the object of the committee, limiting it to war powers alone, and included in it the rest of the magistrates. But the latter refused to recognize any committee whatever. *Ibid.*, 205, 206.

[3] *Ibid.*, 251. "Records," II, 91.

[4] Winthrop, II, 271. [5] *Ibid.*, 272.

cratic party.[1] But at a hearing in the General Court he was cleared of the charges brought against him. In his speech before the court he stated clearly the basis on which he thought the magisterial power rested: "The great questions that have troubled this country are about the authority of the magistrates and the liberty of the people. It is you who have called us to this office, and being called by you we have our authority from God in way of an ordinance." [2] But though Winthrop was vindicated of the charges brought against him, the soil of America proved as inhospitable to his theories of divine right and his theocratic tendencies as it did later to the attempts to transplant hither the feudal system. Both institutions belonged to the old world and could not thrive in a region where old world ideas and traditions had never penetrated. The magistrates in Massachusetts were compelled to submit to hold and exercise their office at the will of the people, not the will of God.

Turning to Maryland we find the question of initiative of legislation the first point of encroachment attempted by the freemen upon the prerogatives of the governor. The first

---

[1] Winthrop, II, 277, 275. Winthrop was not specifically charged, but being plainly the one aimed at, he refused to sit in his official place until he had been cleared of all suspicion.

[2] *Ibid.*, 280. Continuing, he said that magistrates were subject to the same passions as other men, and advised all to exercise more forbearance. There seems to have been a general feeling and fear that the magistrate intended to set up an arbitrary government of unlimited powers. Perhaps this was not without some real foundation. The governors tried to assume some degree of dignity and state, and were attended on public occasions by sergeants bearing halberds. In 1637 these sergeants refused to perform this task longer, saying that they had done it voluntarily and out of respect to the person of the governor, not his office. The governor replied that "the place drowns the person," and that an honor once conferred on the office cannot be withdrawn without contempt and injury. Some of the towns offered to furnish men to bear the halberds, but the governor refused and assigned the duty to two of his own servants. Winthrop, I, 268.

governor's commission of 1637 provided for the summoning of an Assembly. To this body the governor was instructed to submit for approval certain laws transmitted with the commission. There is nothing in this which would prevent the freemen from adopting laws of their own making also and sending them to the proprietor for his approval. The freemen themselves so understood it; and they proceeded to prepare a number of new acts instead of adopting those submitted by the governor. But the governor's commission had further provided that after the dissolution of this first Assembly, the governor might at his discretion call other assemblies for the purpose of preparing laws.[1] And Governor Calvert interpreted this distinction to signify that it was not the province of the first Assembly to pass any acts except those submitted by the proprietor. Acting upon this idea he attempted to prevent the freemen from carrying out their intention. The latter, however, persisted. They carefully examined the commission, appointed a committee to prepare their acts, and refused to pass those submitted by the proprietor.[2] It was doubtless Baltimore's intention to have a precedent made in favor of his own right to initiate legislation and to have a body of laws of his own making adopted before the colonists could take action.[3] The freemen felt that it threatened their right to submit bills, and therefore opposed it at once with all their might. The incident is significant as the first step in that long and jealous contention between the Assembly and the executive on matters of legislation. The strife begun here continued throughout the century.[4]

---

[1] Commission to Governor Calvert, "Archives," Council, 51. The first authentic meeting of the Assembly was in 1637. There was a meeting of the freemen in 1634, but almost nothing is known as to its object or proceedings. Chalmers: "Annals," 210.

[2] "Archives," Assembly, 10, 11, 20.

[3] In the commission it is stated that all laws made previously are to be void. This refers to some acts passed in 1634.

[4] "Archives," Assembly, 239, 264; Council, 219.

It soon became the object of the freemen to secure for their Assembly complete independence of executive control. By his commission the governor was given the prerogative of summoning and adjourning the Assembly at his discretion. In 1640 he exercised this right by proroguing the Assembly from one year to the next, thus preventing yearly election of deputies. It was on this point that the freemen made their most determined attack. They began at the next Assembly after the above event by enacting a law that the house of Assembly should not be adjourned or prorogued but by its own consent. They then appointed a time for their next session.[1] But the governor, being commissioned by a sovereign power outside the colony, unlike the governor of Massachusetts, could not be affected by such acts. He continued to possess and exercise full control over the meetings of the Assembly as well as the number of burgesses entitled to sit in it. After the Restoration this prerogative continued to be one of the chief grievances of the colonists and repeated attempts were made to abolish or limit it.[2] But though numerous laws were passed fixing regular sessions and the number of burgesses to be sent from each locality, the proprietor refused to confirm any of them.[3]

In 1647 the Assembly declared certain laws illegal because not passed by a competent authority. The governor insisted that the body which passed them was competent and proclaimed that he would uphold them.[4] On the other

---

[1] "Archives," Assembly, 117, 121, 131.

[2] *Ibid.*, I, 259; III, 60, 416, 450, 463, 486.

[3] In 1678 on one of these occasions, Baltimore declared himself: "Resolved, never to part with those my charter gives me."

[4] Letter of the Assembly to the proprietor, "Archives," Assembly, 238, 264. The colonists here claim that the Assembly in which the laws were passed was called by Hill, who pretended to be governor but who had no commission; that this Assembly was continued by Leonard Calvert without issuing of new summons; that Calvert imprisoned all those who had rebelled against him, and that among this number were the "whole House of Commons," two or three

hand, the Assembly, in 1649, refused to assent to a number of acts proposed and transmitted by the proprietor. This aroused the indignation of Lord Baltimore and called from him a reprimand in which he vigorously resented the presumption of the freemen and asserted his claim to royal jurisdiction similar to that of the Bishop of Durham: "We are satisfied by learned counsel here that the Bishop of Durham before Henry VIII had and exercised all royal jurisdiction within the said bishopric or county palatine." [1]

The efforts of the freemen to establish their liberty were, however, successful at last, and in 1650 important limitations were made on the extraordinary power of the executive. A law was passed and assented to by the proprietor, providing that no tax of any kind whatsoever should be laid on the colonists without their consent.[2] The war power of the governor was curtailed by the provision that freemen should not be compelled to engage in or support any war outside the limits of the province, and that martial law should be declared only in time of war or insurrection and then only within the camp or garrison.[3] And though these acts were, in accordance with the usual custom at first enacted for only a limited term of years, they were repeatedly confirmed and in 1676 re-enacted as "perpetual" laws.[4]

There can be no doubt but that Lord Baltimore had at heart the welfare of his province, but at the same time that he did all in his power to advance its interests, he was always careful to see that his own rights and prerogatives were not jeopardized. He was ever on the alert to resent

---

only excepted. The next Assembly after that called by Hill made a protest against the laws, signed by nearly every member. The letter of the Assembly and the answer of Baltimore furnish excellent illustrations of the jealousy and distrust existing.

[1] "Archives," Assembly, 264. [2] *Ibid.*, I, 302.

[3] *Ibid.*, 302.

[4] Chalmers, 219, says that "the year 1650 is memorable in the history of Maryland for the final establishment of that Constitution which has continued to the present time."

any act which might detract from his titles or jurisdiction. When the freemen passed a resolution recognizing and confirming the rights and title of the proprietor to the province, Baltimore replied with spirit that his right was not in need of any confirmation by the Assembly, yet he was surprised that any freeman should have voted against such an act.[1] He rejected the laws passed by Governor Green because the oath had not been taken "without exception" in precisely the language stipulated.[2] It should not, however, be concluded that these acts were the result of any petty desire of the proprietor to tyrannize over the province. They were rather due to the fact that Baltimore was a courtier, under the influence of English royal ideas, dominated by English principles of jurisprudence and administration, and accustomed to the exercise of the prerogative. Under these circumstances it was not only natural but inevitable that he should desire to uphold his prerogative and assert his system of administration in the colony. His jealousy of anything that detracted from his rights and titles, his absolute refusal to grant a permanent and definite constitution for the Assembly, are only evidences of a wide difference between his conception of a province and provincial administration and the freemen's conception of a colony and colonial institutions.

This difference will explain the ease with which the revolution of 1659-60 was accomplished by the freemen and the promptness with which it was suppressed by the proprietor. The occasion of this disturbance was no doubt the unsettled state of affairs in Maryland during the Commonwealth period and the popular revolution in Virginia in 1652.[3] Taking advantage of this example and opportunity the burgesses, in 1658-59, rapidly put into execution a plan to change the province into a commonwealth in which the voice of the representatives of the freemen rather

---

[1] "Archives," Assembly, I, 265. [2] *Ibid.*, 313.
[3] See above, 69.

than the deputy of the proprietor, should be paramount.[1] The House of Burgesses declared that it was not dependent upon any other power whatsoever, and refused to permit the governor and council to sit as an upper house. The executive was made dependent upon the Assembly by the governor's surrender of his commission and his acceptance of a new one issued by the Assembly.

Governor Fendall gave up his position as governor and consented to sit in the House of Burgesses in conjunction with the speaker, with a double or casting vote as representing the proprietor.[2] Thus by an almost spontaneous assertion of power the administration of the colony was entirely changed. There seems to be some doubt among historians as to the character of Fendall, and as to whether the trouble was incited by him or arose from patriotic motives among the burgesses.[3] Whichever view may be correct, the fact remains that the movement received a strong popular support. It shows how evident was the opposition to the proprietary system of administration. Though the movement was promptly checked by Baltimore and the former system re-established with the assistance of the king at the Restoration, it is proof that the colonists were ready to seize the first favorable opportunity to assert their independence and reduce the executive to a position of secondary importance.

---

[1] "Archives," Council, 387. [2] "Archives," Assembly, I, 388, 390.

[3] Fendall, though appointed by the proprietor, was a colonist who had previously been engaged in opposition to the proprietor's authority. Bancroft, I, 263; McMahon, 212. The action of Fendall in consenting to sit in the House of Burgesses and accepting a new commission from them, goes to support McMahon's views.

SUMMARY.

The facts set forth in the foregoing pages, if they have been correctly interpreted, lead to the following conclusions:

1. The governments projected in the colonial charters were executive in form, the Lord Governor and his subordinates being entrusted with the administration of all the powers exercisable in the colonies.

2. With one exception there was no attempt, during this period, to guarantee by charter the political rights of the colonists by providing for them a share in the government.

3. Popular opposition to this system arose as soon as the colonies were founded and did not begin with the Revolution of 1688 or particularly characterize the eighteenth century.

4. Through the enormous grants of territory and jurisdiction made to the trading companies the latter tended to become independent. Partly to check this tendency, partly because of the popular or democratic development in the colonies, the English government began the attempt to centralize the government of the colonies. This policy did not originate after the Restoration.

5. But in spite of this policy the popular movement had succeeded, prior to 1660, in considerably reducing the power of the executive officers by placing numerous and important checks upon the exercise of their functions.

APPENDIX.

I.

The following list of Governors of Massachusetts is taken from Moore's "Lives of the Governors of Massachusetts."

John Winthrop . .	appointed	1630	John Endicott . .	appointed	1644
Thomas Dudley . .	"	1634	Thomas Dudley . .	"	1645
John Haynes . . .	"	1635	John Winthrop . .	"	1646
Henry Vane . . .	"	1636	John Endicott . .	"	1649
John Winthrop . .	"	1637	Thomas Dudley . .	"	1650
Thomas Dudley . .	"	1640	John Endicott . .	"	1651
Richard Bellingham,	"	1641	Richard Bellingham,	"	1655
John Winthrop . .	"	1642	John Endicott . .	"	1656

II.

Governors of Plymouth.

John Carver . . .	appointed	1620	William Bradford .	appointed	1637
William Bradford .	"	1621	Thomas Prence . .	"	1638
Edw. Winslow . .	"	1633	William Bradford .	"	1639
Thomas Prence . .	"	1634	Edw. Winslow . .	"	1644
William Bradford .	"	1635	William Bradford .	"	1645
Edw. Winslow . .	"	1636	Thomas Prence . .	"	1658

III.

Governors of Virginia, from 1606 to 1660.

Sir Thomas Smith . . . . 1606–18 Sir Edwin Sandys 1618–24	Treasurers of the Virginia Company of London. Elected by the company.
Edward M. Wingfield	Presidents of the council in Virginia from 1606 to 1609. Appointed by the council in Virginia.
John Radcliff	
John Smith	
George Percy	

Sir Thomas West, Lord de la Warr . . . . . 1610–18 — Lord Governor and Captain General. Appointed by the London Council.

Sir Thomas Dale 1611–14
Sir Thomas Gates 1614–16
Sir Thomas Dale 1616–17
Captain George Yeardley 1617–18
Captain Samuel Argall 1618
— Deputy Governors from 1611 to 1618. Appointed by Governor Delaware or by the London Council.

George Yeardley 1618–21
Sir Francis Wyatt 1621–24
— Lord Governor and Captain General. Elected by the Virginia Company.

Sir Francis Wyatt 1624–27
Lord Governor and Captain General. Appointed by the King.

George Yeardley 1626
Deputy Governor. Appointed by the King.

George Yeardley 1627
Lord Governor and Captain General. Appointed by the King.

Captain Francis West 1627–28
Chosen by the council in Virginia on the death of Yeardley.

John Pott 1628–29
Chosen by the council in Virginia on the departure of West.

Sir John Harvey 1629–35
Lord Governor and Captain General. Appointed by the King.

Captain John West 1635
Chosen by the council in Virginia on the deposition of Harvey.

Sir John Harvey 1636–39
Lord Governor and Captain General. Appointed by the King.

Sir Francis Wyatt 1639–41
Lord Governor and Captain General.

Sir William Berkeley 1641–52
Lord Governor and Captain General. Appointed by the King.

Richard Kemp 1644
Deputy Governor. Chosen by the council in Virginia when Berkeley left for England.

Richard Bennett 1652–55
Edward Diggs 1655–56
Samuel Matthews 1656–59
Sir William Berkeley 1660
— Elected by the Virginia Assembly.

CONSTITUTION AND ADMISSION OF IOWA INTO THE UNION

SERIES XVIII No. 7

JOHNS HOPKINS UNIVERSITY STUDIES

IN

HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics are present History.—*Freeman*

CONSTITUTION AND ADMISSION OF IOWA INTO THE UNION

BY JAMES ALTON JAMES, PH. D. (J. H. U.)
Professor of History, Northwestern University

BALTIMORE
THE JOHNS HOPKINS PRESS
JULY, 1900

Copyright, 1900, by
N. MURRAY

The Lord Baltimore Press
THE FRIEDENWALD COMPANY
BALTIMORE, MD., U. S. A.

TABLE OF CONTENTS

PAGE

I. Introduction, ... 7

II. Government Before the Territory of Iowa was Established, ... 9

III. Events Leading to the Constitutional Convention of 1844, ... 13

IV. The Constitution of 1844, ... 17

1. What was to be the Status of the Negro?
2. The Establishment of Banks and of Schools.
3. The Contest Aroused in Congress.
4. The Constitution Submitted to the People.
5. Resubmission of the Constitution to the People.

V. The Convention and the Constitution of 1846, . . 33

1. The Bank Question.
2. Other Features of the Constitution.

VI. Iowa Becomes a State, ... 37

VII. The Calling of the Constitutional Convention of 1857, ... 39

VIII. The Constitutional Convention of 1857, ... 41

1. The Bank Problem.
2. Rights of the Negroes.
3. Other Provisions of the Constitution.

IX. Amendments of the Constitution, ... 51

CONSTITUTION AND ADMISSION OF IOWA INTO THE UNION

I.—Introduction.[1]

Since the States of the Middle West have become so prominent in the decisions on national issues, it is interesting to contemplate their coming into the political arena. By such a study we may comprehend more fully the significance of fifty years of our nation's growth and the development of new principles. Especially is the study of the evolution of Statehood opportune while we are permitted to supplement the written records, at times misleading, by the testimony of those who were actively engaged in the contest for admission.

It is hoped that this study may contribute somewhat to the more orderly presentation of material, some of which is difficult of access, and thus aid the future historian at once to correct some of the statements made by past writers, and give a more complete account of the problems surrounding the coming of Iowa into the Union.

Iowa was the subject for a great amount of legislation

[1] For many of the facts of this study, I am indebted to the Hon. T. S. Parvin, LL. D., one of the district attorneys of the Iowa Territory. He has also been a careful observer of the development of the State since it was admitted into the Union.

I am also under obligation to the librarians and other officials of the Masonic Library of Cedar Rapids, of the State Historical Society of Iowa City, and of the State Historical Society of Des Moines for their kindly assistance.

The collecting of material was begun while I occupied the chair of History in Cornell College. Partial results were set forth in a volume of the American Historical Association, 1897, pp. 161-173, on National Politics and the Admission of Iowa into the Union.

before the time of its application to become a State. As a part of the vast territory west of the Mississippi river, it was claimed in turn by England and France, was ceded to Spain and again to France and was finally purchased in 1803 by the United States. By an act of March 26, 1804, the Louisiana purchase was divided into two territories. One of these, the territory of Orleans, was given a definite territorial government. The other, the district of Louisiana, was allowed to remain practically without organization in itself, but was placed under the jurisdiction of the territory of Indiana. The people of the district were dissatisfied with such a settlement and their representatives, assembled at St. Louis, sent a vigorous remonstrance to Congress against the "dictates of a foreign government," the "violation of the principles of liberty and equality" and other supposed abuses. Their petition for the establishment of a separate territory was effective, and in March, 1805, the Territory of Louisiana was created.

In 1812, this territory was recognized as the territory of Missouri. When Missouri became a State in 1821, there was no provision made for the government of the territory to the north, which embraced the future commonwealth of Iowa. This condition seems to have obtained until 1834, when it was included in the territory of Michigan. The act declared that it was for the purpose of temporary government, and that the inhabitants therein shall be entitled to the same privileges and immunities and be subject to the same laws, rules and regulations in all respects as the other citizens in Michigan Territory.[2] When the territory

[2] In spite of this decree, there seems to have been little heed paid to the securing of an orderly form of government in that portion of the territory west of the Mississippi river. In the discussion of the question as to the advisability of forming a separate territorial government for Wisconsin, March 28, 1836, this lack of government was set forth. The judge appointed under the act of 1823, which provided an additional judge for Michigan territory, having jurisdiction within the counties of Michilmackinac, Brown and Crawford, declared that he had no authority outside these three

of Wisconsin was established by an act of July 4, 1836, Iowa was included and remained under the jurisdiction of that territory until it was organized as a separate territory, June 12, 1838.[3]

II.—Government Before the Territory of Iowa was Established

The lack of organized government for Iowa before the year 1830 was of little moment, for it was not until that year that the first white settlement was made. During this year a company of miners crossed the river from Illinois, and settled at Dubuque for the purpose of working the lead mines. They quickly agreed to a compact, which was to constitute a government suitable to themselves. But the land of which they took possession was still owned by the Sac and Fox Indians, and troops were sent by the United States Government to protect the Indian rights. By 1834, the Indian title had been extinguished and some two thousand persons were living in Dubuque, still under their self-constituted government, the United States having made no provision for the settlement of the territory. Settlements were also made at Burlington, Keokuk and several other places. Unlike the mining camp at Dubuque, these settlers had come, bringing their families with them, for the purpose of founding homes. Settlers first went to Burlington in 1832, and they organized their first local government in 1833. The land of which they had taken

---

counties. In the case of a murder committed in the county of Dubuque, "the murderers were discharged, after argument before the judge, for want of power to punish them. The Committee on Judiciary had recently received intelligence that, for want of law to punish these murderers, one of them had been, a few weeks since, deliberately shot down in the public streets of the town of Dubuque." Congressional Debates, Vol. XII, part I, p. 978.

[3] Reprinted from the United States Statutes at Large, Vol. V, p. 235. Quoted in Shambaugh, Documentary Material Relating to the History of Iowa, No. 5, pp. 102-116.

possession had not been surveyed. How, then, were they to hold it? The improvements made for their actions were clearly contrary to a decree of Congress.[4] Regardless of this fact, settlements multiplied, each with its local organization, usually known as "Claim Association."

The principal features of these organizations were practically the same.[5] (1) There was a provision as to the amount of land in a claim. In some cases this was four hundred and eighty acres; in others it was one hundred and sixty acres. There was sometimes a provision as to what part should be prairie and what part timber. (2) There was a provision as to the amount of improvement required to hold the claim in cases where the claim was not occupied. (3) There was a provision as to occupancy. Desertion for a specified time or a failure to make the required improvements worked forfeiture. (4) Claims could be sold to any person approved by the organization, and the buyer had all the privileges and obligations of the original claimant. A deed was given and recorded. (5) Provisions were made for settling disputes between claimants. As the government surveys had not been made, each claimant could have his amount of land, but he could not tell where his lines would be. Valuable improvements were made before the surveys; this naturally gave rise to difficulties and disputes. Provisions for settling these were of different sorts. The members of the organization bound themselves to abide by the decisions of courts established by the association; or difficulties were settled in mass meeting; or especial arbiters were chosen to settle special cases; or a neighboring organization was invited to assist in settling a difficulty. In one or another of these ways nearly all cases were adjusted in an orderly way. (6) There were provisions for

[4] By act of 1807, trespassers upon United States territory were subject to removal, fine and imprisonment.

[5] For the constitution of an association, see Macy, Institutional Beginnings in a Western State; Johns Hopkins University Studies in Historical and Political Science, Vol. II, pp. 33-38.

securing the enforcement of all decisions and for protecting their claims against outside parties."[6] When the land was placed on the market by Congressional authority the decrees of the associations were completely enforced. No difficulty was experienced on the part of the original claimants in securing, through their special delegates, at a nominal rate, the lands which they had taken.[7]

In addition to this type of local government, the territory of Michigan created out of the area west of the Mississippi river, the counties of Dubuque and Des Moines, each of which was to constitute a township. Wisconsin, too, provided for the creation of sixteen counties within the same area, each having a carefully organized system of townships. These legislative units were of little force against the earlier organizations even during the first years after a separate territorial government was formed.

While these pioneers were content with their own local government, they appreciated the need of a government which would be adequate for the administration of more general affairs. So in 1837, the question of organizing a territorial government was taken up for the first time by a convention which met in Burlington. They adopted a memorial to Congress in which they set forth their needs as follows: "From June, 1833, until June, 1834, a period of one year, there was not even a shadow of government or law in all western Wisconsin. In June, 1834, Congress attached her to the then existing Territory of Michigan, of

[6] Macy, Institutional Beginnings in a Western State; Johns Hopkins University Studies in Historical and Political Science, Vol. II, pp. 11, 12.

[7] This occupation of land which had been recorded by the Association was declared to be legal by the territorial legislature. But this decision was clearly contrary to the intent of the act of 1807. It was sanctioned, however, by a decision of the Supreme Court of the territory in a test case during the year 1840. Iowa, by this virtual annulment of a United States statute, showed that independence characteristic of the commonwealth in the later contest by which it became a State.

which Territory she nominally continued a part until 1836, a period of little more than two years. During the whole of this time, the whole country west, sufficient of itself for a respectable State, was included in the two counties of Dubuque and Des Moines. In each of these two counties there were holden, during the said term of two years, two terms of a county court (a court of inferior jurisdiction), as the only source of judicial relief up to the passage of the act of Congress creating the Territory of Wisconsin. That act took effect the third day of July, 1836, and the first judicial relief under that act was at the April term following, 1837, a period of nine months after its passage; subsequent to which time there has been a court holden in one solitary county in western Wisconsin only. This, your memorialists are aware, has been recently owing to the unfortunate indisposition of the esteemed and meritorious Judge of our district; but they are equally aware of the fact that had western Wisconsin existed under a separate organization, we should have found relief in the services of other members of the judiciary, who are at present, in conseqence of the great extent of our Territory, and the small number of judges dispersed at too great a distance and too constantly engaged in the discharge of the duties of their own districts, to be enabled to afford relief to other portions of the Territory. Thus, with a population of not less than twenty-five thousand now, and of near half that number at the organization of the Territory (of Wisconsin), it will appear that we have existed as a portion of an organized Territory for sixteen months with but one term of court only."[8] Evidently the desired effect was produced, for Congress, by an act of June 12, 1838, constituted the "Organic Law," which was virtually a Constitution for the Territory of Iowa.[9]

[8] Quoted in Macy, Institutional Beginnings in a Western State; Johns Hopkins University Studies in Historical and Political Science, Vol. II, pp. 9, 10.

[9] The organic act is given in Shambaugh, Documentary Material

III.—Events Leading to the Constitutional Convention of 1844

That ambitious characteristic of American pioneers quickly asserted itself. Some of her prominent men spoke of an early admission into the Union. Her governor in 1839[10] recommended to the Legislative Assembly that a memorial to Congress be prepared asking that body to pass an enabling act at their next session. His reasons for taking this step were warranted, he thought, in consideration of the rapidly increasing population and advancing prosperity of the territory and because of the inherent weakness of the government at that time. He cited the example of Ohio, Indiana and Illinois, whose prosperity was much enhanced after they became States. The question was then agitated in the Legislative Assembly. A minority report of the committee on territorial affairs seconded the recommendation of the governor, but the report of the majority was adopted.[11] This majority resolution set forth the inexpediency of such a move at that time; holding that a State government would increase the burden of taxation and that the people needed all the means at their command for the making of homes. It was further asserted that Iowa, when made a territory, was given "ample liberty and freedom in local self-government," a privilege not granted to territories previous to that time.[12]

A message of Governor Lucas of July 14, 1840,[13] again

Relating to the History of Iowa, No. 5, pp. 102-116. Reprinted from the United States Statutes at Large, Vol. V, p. 135.

"This act must be viewed by us as the Constitutional Charter of the Territory; it prescribes our powers, defines our duties, directs our actions, and points out our rights and privileges." From the Message of Governor Lucas, Nov. 12, 1838.

[10] Message of Governor Lucas, November 5, 1839.

[11] The vote stood 21 to 4.

[12] Iowa City Standard, Feb. 19, 1842. From a letter of Francis Springer, a member of the Council.

[13] Journal of House of Representatives, Extra Session, 1840.

suggested that the Legislative Assembly should provide for the taking of the sense of the people, at the next annual election, relative to a constitutional convention. In accord with his wishes, an act was passed, July 31, 1840, calling for a vote of the people on this question. In August of that year, the proposition for a *convention* was defeated by a large majority.[14]

But the question was by no means settled. In his message of the following year, Governor Chambers[15] also spoke of the legislation which would be necessary to again secure the dictum of the people, on the question of a convention, as being of paramount importance. He doubted not but that the rapid increase of the population[16] and the recent legislation of Congress on the disposition of the proceeds of the sales of the public lands would have much to do in changing public sentiment. Again, an act of the Legislative Assembly called for a vote of the people in August of the following year. This result was largely produced through the vigorous use of the party whip. In general, the Whigs, then holding the offices by appointment from Washington, were opposed. The Democrats, with a probable majority in the Territory, hoped to obtain the spoils when Iowa should become a State. Various arguments in favor of the convention were set forth by the Democratic press. It was held that the population of the State would be rapidly increased. They believed large numbers would come into the State from Illinois and Indiana, hoping thus to escape the embarrassed financial condition of those states.[17] The one thing which the people of Iowa feared

[14] Vote for a convention, 937; against, 2907. Iowa City Standard, Vol. I, Nov. 27, 1840.

[15] Message of Dec. 8, 1841.

[16] By the census of June 1, 1840, there were 43,000 inhabitants, an increase of over 21,000 in two years. Iowa Capitol Reporter, Jan. 1, 1842.

[17] As a safeguard against such a condition ever obtaining in Iowa, it was urged that the Constitution ought to be so framed as to prevent the creation of a state debt in any form.

and largely determined the vote against the convention, was just this of financial burdens. The privilege of electing their own officers instead of receiving those sent them was urged; also the greater influence which the State would have in the councils of the nation. That the taxes would be slightly augmented was admitted. As an offset, it was asserted that they would obtain, through their greater influence, much larger appropriations for internal improvements, then "few and far between, but trifling in importance compared with those which are annually lavished upon the Atlantic frontier or even upon the lake coast."[18] The then prevalent Western sentiment against Eastern dominance is deftly used, and it was urged that the Senators and Representatives from Iowa might be the means of greatly aiding in preventing "Western interests from being longer neglected." An appeal was made to parents on behalf of the education of their children, for no aid could be gotten from the lands reserved for school purposes while Iowa remained a territory. Finally, they insist that if they do not now apply for admission it will be delayed for some time, for Wisconsin will be admitted along with Florida and there will remain no slave state which may be paired with Iowa. The stock arguments brought forward against a convention were that there would certainly be a great increase of taxation in order to maintain a state government, and that it was merely a scheme of Democratic office-seekers. The necessity of paying for their own administration of government, by the levying of taxes, again frightened the people and they decided against the convention.[19]

Another message of Governor Chambers[20] looking to the same end was laid on the table by the Territorial House of Representatives. Finally, however, an act of the legislature passed February 12, 1844, providing for a constitu-

[18] Iowa Capitol Reporter, June 18, 1842.

[19] Vote for a convention, 4129; against, 6825. Iowa City Standard, Vol. II, Sept. 10, 1842.

[20] Message, Dec. 4, 1843. Journal House of Representatives, p. 10.

tional convention, was sanctioned by a majority of the qualified voters in the April election.[21] The arguments for and against the convention were practically the same as those already given. The Whig press gave its version as follows: "There is in this Territory a set of speculating politicians, mere soldiers of fortune, whose whole souls are wrapped in the endeavor to rush the Territory into a State organization in the belief that their precious selves will get elected to the offices that will be created. The people have already repudiated them and their offers on two occasions, and if true to themselves, they will do it a third time. It is no light matter to propose to the people of this Territory, poor as they are, and even now almost without a circulating medium, that they shall give up the yearly receipt of some sixty thousand dollars in hard cash and tax themselves some forty thousand dollars for the support of a State government. The difference that it would make with each land-holding elector, and upon that class the principal burden of this change would fall, could not be less than ten dollars per annum upon an average, and it is not unlikely it would be even more."[22] There was a striking democratic tone in the meetings which were held to select delegates to the convention. Resolutions were prepared in many of them. One of these statements declared that they looked upon the common phraseology used in petitioning legislative bodies, such as "we humbly ask your honorable bodies"; "we will as in duty bound ever pray," as relics of monarchy and wholly incompatible with the rights of freemen and the spirit of our noble institutions and ought to be dispensed with in future. A lack of confidence in the men of the so-called professions on the part of the farmers is notably present. "We wish," so an address to the people asserted,[23] "every class of our citizens fairly and fully represented by

[21] Majority in favor of State government, 2913. Hull, Historical and Comparative Census of Iowa, Introduction, p. ix.

[22] Iowa City Standard, Feb. 29, 1844.

[23] Iowa City Standard, June 6, 1844.

their peers, and however much we value and honor the various professions of our country, still we believe they cannot, from the very nature of things by any possibility, enter into the feelings and understand the wants of a working community and not being their peers, cannot fairly represent them; and, aside from this, there is such a disparity between the prices generally charged by professional men for their services and the prices we are allowed for hard labor that we have but little reason to hope for a fair, equal and economical government from their hands." [24] Party lines based on national party principles were closely drawn in the selection of delegates to the convention.[25]

The charges and counter-charges made in the conduct of the campaign were not materially different from those heard to-day.[26]

IV.—The Constitution of 1844

The convention which was to frame a constitution met at Iowa City, October 7, 1844. Of the seventy-three members constituting that body, fifty-two were Democrats. The

---

[24] Forty-six of the seventy-three members in the convention were farmers.

[25] We contend that the Whig party has kept the faith handed down from the Whigs of the Revolution and the Framers of the Constitution. We contend that a constitution for the State of Iowa formed under the auspices of the Whigs would, with the greatest degree of certainty, secure to her all the advantages of good government and wholesome laws. Iowa City Standard, July 18, 1844.

[26] The defeated party declared: "We have just passed through a most important and exciting canvass in this country, where Locofocoism used every means that corruption could suggest or ingenuity devise for the purpose of re-establishing its departing ascendency. Lies were spoken and printed, money was subscribed and spent, midnight expeditions were got up, voters were imported, imbeciles were rushed to the polls, some were made drunk, some were overawed; in a word, nothing was left undone by the Locofocos to carry the country. On the other hand, the Whigs made just their usual exertion, nothing more." Iowa City Standard, Aug. 8, 1844.

members had come to Iowa from fourteen different States. A majority of the delegates were from Northern States."[27]

A heated discussion was projected at the outset upon the desirability of opening the convention each day with prayer.[28] The question was finally indefinitely postponed.

That desire of keeping constituents informed of the doings of their representatives had not taken possession of the American mind of that period. A majority of the members from the beginning were opposed to the additional expense of the convention which would ensue were members to be allowed to subscribe for even ten copies of the papers published in the city where they were in session. Notwithstanding the urgent appeal on the part of some of the members that it was poor economy to deny the people information upon a subject of such special importance and one upon which they would be called upon to express their opinions in the near future, the cry of economy prevailed.

I. WHAT WAS TO BE THE STATUS OF THE NEGRO?

Iowa, as early as the year 1840, had been given its position relative to one phase of the slavery question. At that time her Chief Justice, Charles Mason, in delivering the decision of the Court,[29] took the advanced ground that Iowa was free soil, and that when a slave, with the consent of his

---

[27] Pennsylvania, 13; Virginia, 11; New York, 9; Kentucky, 8; Ohio, 8; North Carolina, 6; and the remainder from Massachusetts, Indiana, Tennessee, Maine, Illinois, New Jersey and Scotland.

[28] It was declared "It would not be economical, for the convention sat at an expense of two hundred to three hundred dollars per day, and time was money. To pass a resolution to have prayers was compelling men to listen to what they were opposed to and violated one of the inalienable rights of men." Public prayer was too ostentatious. If the convention had a right to pass such a resolution, it had the right to establish a religion. It had no right to bring members on their knees every morning. Absent members might be brought in and compelled to hear what they were opposed to. This was contrary to the inalienable rights of man. Iowa City Standard, Oct. 10, 1844.

[29] The Territorial Supreme Court consisted of three justices.

owner, entered this territory, from that moment he was free.[30]

Like the rest of the Northern States, there was the desire to prohibit slavery by means of a constitutional provision. But the framers of this constitution were opposed to the giving of free negroes those civil, social, and educational privileges enjoyed by white men. The report of a special committee, upon a petition from a considerable body of citizens, sets forth the prevailing sentiment of the period. This report admitted the truth of the expression, that "all men are created equal," as an abstract proposition, but holds that it becomes modified when man is considered as a part of an artificial state in which government places him. It asserts that the philanthropist should commiserate the fate also of women and children who, in like manner, are deprived of certain rights. Then follows what was considered conclusive reasoning on the proposition that that government is not unjust which deprives the "citizen of color" of some privileges. It was held that the whole subject should be treated as a question of policy or contract where self-interest is just as properly consulted as in the promotion of a commercial treaty or a private contract. "'Tis the *white* population," the report continues, "who are about to form a government for themselves, no negro is represented in this convention and no one proposes to become a member of the compact. 'Tis the white population of this territory who petition for the admission of the negro. They necessarily believe that the introduction of

[30] Morris, Iowa Reports, 1848. The report is as follows: "In the matter of Ralph, a colored man, on habeas corpus. Where A., formerly a slave, goes, with the consent of his master, to become a permanent resident of a Free State, he cannot be regarded as a fugitive slave. The act of 1820, for the admission of Missouri into the Union, which prohibits slavery north of 36° 30′, was not intended merely as a naked declaration, requiring legislative action in the states to carry it into effect, but must be regarded as an entire and final prohibition. The master, who subsequently to this act, permits his slave to become a resident here, cannot afterwards exercise any acts of ownership over him within this territory."

such a population as citizens would not interfere with the enjoyments of the white citizens. . . . The negro, not being a party to the government, has no right to partake of its privileges." They feared, a common argument of the time,[31] if concessions were made that the black population of other states would enter Iowa. That there was little basis for such an argument[32] was of small moment, but it was convincing. Then follows an enumeration of abuses which it was thought would be introduced; the ballot-box would fall into the hands of the negroes and a train of evils ensue beyond calculation; there would be less security to persons and private property; discord and violence would ensue if the two races were put on equal terms; and, finally, government itself would become anarchical or despotic. This report was laid on the table, and notwithstanding the various petitions received, there was no attempt to revive the question either in this convention or that of 1846.

2. THE ESTABLISHMENT OF BANKS AND OF SCHOOLS

The refusal of President Jackson to sign the bill which allowed the re-charter of the United States Bank had its

---

[31] Thorpe, Constitutional History of the American People, Vol. II, pp. 250, 251.

[32] "Since 1792, suffrage in New Hampshire had been unrestricted. Connecticut, less liberal, had restricted the right to vote to white persons. In 1800, the free colored population of New Hampshire was eight hundred and eighteen; ten years later it had increased to nine hundred and seventy, or nineteen per cent. In 1800, the free colored population of Connecticut was five thousand three hundred and thirty, which ten years later had increased twenty-one per cent. . . . In 1830, the free colored population of New Hampshire was six hundred and four, or thirty-three per cent less than ten years previously; while in Connecticut at this time it had increased three per cent. In 1840, the free colored population of New Hampshire showed a loss of over ten per cent; while in Connecticut it had increased, though only one per cent. Thus during a period of forty years the free colored population of New Hampshire fell from eight hundred and eighteen to five hundred and thirty-seven, a loss of thirty-three per cent; while in Connecticut it increased from five thousand three hundred and thirty to eight thousand one hundred and five, or about fifty per cent." Thorpe, Constitutional History of the American People, Vol. II, pp. 251, 252.

effect as far west as the, then, really unknown district of Iowa. Almost two years before Iowa was given a territorial government, the Wisconsin Legislature granted a charter for the formation of a corporation bearing the name of the Miner's Bank of Dubuque.[33] This charter was to continue in force until May 1, 1857. Business might be begun when there should be forty thousand dollars in stock paid in. No bills of a less denomination than five dollars were to be issued during the first four years of its existence. At the end of this period, the Legislature might prohibit the issue of bills for a less denomination than ten dollars, and at the end of ten years, prohibit those under the denomination of twenty dollars. In common with other banks throughout the country, the Miner's Bank was greatly crippled by the issue of the Special Circular by President Jackson. It was compelled, too, March 1, 1841, to suspend specie payments.[34] This necessity brought the Bank into general disfavor and a bill introduced into the fifth Legislative Assembly provided for the repeal of its charter. Failing of a majority for the time, the contest on the same measure was aroused in the two succeeding assemblies. Finally, May 14, 1845, the bill was passed.[35] The

[33] Charter granted, Nov. 30, 1836. For the facts on this subject, I am chiefly indebted to H. W. Lathrop, of Iowa City. Mr. Lathrop has given the account in the Iowa Historical Record for April, 1897, pp. 54-65.

[34] "During the pendency of the bill in the Fifth Legislative Assembly, a report was made by a committee to whom it was referred, containing the statement that the Territory was owing the bank $5876.25, then long overdue; and that this, with the specie on hand, was enough to redeem all its outstanding notes not in the hands of the stockholders." Iowa Historical Record, April, 1897, p. 57. This money had been used in the construction of the Capitol building at Iowa City.

[35] This whole contest with the bank seems to have been "a warfare between weakness and poverty on one side, and impecuniosity, bank prejudice and legal power on the other."

"While the Territory, represented by the Legislative Assembly, was trying to force the Bank to pay specie on its notes, so depressed was public credit, that territorial warrants were hawked about the streets at a fifty per cent discount, because there was

friends of the bank were compelled to acquiesce after a decision was rendered against them by the Supreme Court.

The Convention of 1844 partook of the spirit of opposition to banks then strong in the territory and becoming stronger throughout the Union. No question was discussed, by them, at greater length. Finally they agreed by taking a position in advance of that which had been taken in the other states. They provided that no banking institution of whatever nature should be created by the Legislature unless the charter should first be submitted to a vote of the people at a general election for State officers, and receive a majority of the votes of the qualified electors.[36] The State was not to become a stockholder in any such institution.

Feeling against the establishment of corporations was also strong.[37] The clause at last agreed upon, provided that no act of incorporation should continue in force for more than twenty years, unless it had been created for the purpose of carrying on public improvement; that the property of the individual members should be liable for the debts of the incorporation; that the legislature might repeal acts of incorporation granted by it whenever it so chose, and that the property of the inhabitants of the State should not, without the consent of the owner, be taken by any such company. Counties, towns, and other public corporations were not to be subject to these limitations.

Schools were early established in the territory of Iowa.[38] To the urgent appeals of her territorial government[39] and

---

no specie or any other money on hand to pay them." Iowa Historical Record, April, 1897, p. 58.

[36] Journal of the Constitutional Convention, 1844, p. 200.

[37] "These soulless monsters have tyrannized enough; and we rejoice that Iowa in the outset has bound the hydra, hand and foot." Iowa Capitol Reporter, Vol. III, p. 43, No. 9, 1844.

[38] The first school was established in Iowa in 1830. Parvin, "Who Made Iowa," pp. 19, 20.

[39] In his first message to the territorial Legislature, Governor Lucas, the first governor of the territory, said: "The subject of providing by law for the organization of townships I consider to

the co-operation of her territorial Legislatures is largely due the foundation for the present excellent common school system. It is not surprising then that the Iowa Constitutional Conventions paid much attention to the cause of education. The Convention of 1844 set forth its views in one of the most striking clause of the Constitution. There was to be a Superintendent of Public Instruction appointed by the Legislature for a term of three years. Improvement along "intellectual, scientific, moral, and agricultural lines, was to be promoted through the expenditure of the interest derived from a perpetual fund. The sources for this fund were to be from the sale of all lands granted to the State by the United States for the support of schools; the five hundred thousand acres of public lands to be received under the act of 1841; "all estates of deceased persons without will or without heirs"; and the rents of all unsold lands within the State. It provided also that the Legislature should establish a system of common schools by which they should be maintained for at least three months during the year in each school district. There was to be established at the earliest time possible, a library in each township, which should derive support from money paid as exemption from military duty and the proceeds from fines in the several counties. The means provided for University education, through the sale or rent of lands granted by the United States Government, was to be guarded as a permanent fund for the University purposes.

After a session of twenty-five days, the Constitution was completed and was submitted to Congress by the territorial delegate.[40]

---

be of the first importance and almost indispensable to the local organization of the government. Without proper township regulations it will be extremely difficult, if not impossible, to establish a regular school system. There is no subject to which I wish to call your attention more emphatically than to the subject of establishing at the commencement of our political existence a well-digested system of common schools." Quoted in Parvin, Who Made Iowa, p. 26.

[40] The boundary proposed was the following: Beginning in the

3. THE CONTEST AROUSED IN CONGRESS

A significant contest was aroused when the question of the admission of Iowa was presented before Congress. True, it was but the "old struggle for legislative supremacy" between freedom and slavery, but it was now at close quarters. Florida had submitted her Constitution to Congress in 1839, but because of internal dissensions in the Territory she was not admitted to Statehood. Texas, with a territory out of which might be carved "four or five states," had just come under national jurisdiction. Members were fearful for the equipoise of the numbers in the Senate and the committee was thus led to recommend for consideration in the House that "aged, waiting, slave-holding Florida" should be "yoked" in one bill with "young, energetic, free Iowa."

The Committee on the Territories accepted the constitutions submitted and reported a bill for the simultaneous admission of the two States. The conflict was precipitated at once by the introduction of an amendment [41] which provided that Iowa should have the following boundary in place of that given by the convention and believed to be the most natural: [42] "Beginning in the middle of the St. Peter's

middle of the main channel of the Mississippi River opposite the mouth of the Des Moines River; thence up the said river Des Moines in the middle of the main channel thereof, to a point where it is intersected by the old Indian boundary line, or line run by John C. Sullivan in the year 1816; thence westwardly along said line to the "old northwest corner of Missouri"; thence due west to the middle of the main channel of the Missouri River; thence up in the middle of the main channel of the river last mentioned to the mouth of the Sioux or Calumet River; thence in a direct line to the middle of the main channel of the St. Peter's River, where the Watonwan River (according to Nicollet's map) enters the same; thence down the middle of the main channel of said river to the middle of the main channel of the Mississippi River; thence down the middle of the main channel of said river to the place of beginning.

[41] Congressional Globe, Vol. 14, p. 269. This amendment, offered by an Ohio Representative, was an amendment to an amendment "defining the boundaries of Iowa and Missouri."

[42] Capitol City Reporter, Nov. 9, 1844.

River, at the junction of the Watonwan or Blue Earth River; with the said river St. Peter's running thence due east to the boundary line of the Territory of Wisconsin in the middle of the Mississippi River; thence down the middle of the last-named river with the boundary line of the Territory of Wisconsin and State of Illinois to the northeast corner of the State of Missouri in said river Mississippi; thence westwardly with the boundary line of said State of Missouri to a point due south from the place of beginning; thence due north to the place of beginning in said St. Peter's River." [43]

The question did not call out a lengthy debate either in the House or in the Senate. It was heated and of great interest in the light of later and even present conditions. Most significant was the speech of Mr. Vinton [44] of Ohio, in that he demonstrated in an able manner the real position which the West was to occupy in bringing about the best interests of the nation. He favored the reduced limits for the new State, which even then would have an area greater than that of Ohio by one-third.[45] He thought that policy "unwise and mistaken" which had hitherto prevailed in Congress, of forming Western States of such large proportions that the great Mississippi Valley would be deprived irrevocably of its share in legislation.

The ordinance of 1787 was characterized as an act of "flagrant injustice," in that it was framed with the distinct view of making and holding an Atlantic ascendency.[46] Instead of the twelve or more States which would have been formed out of this Northwest Territory by the act of the Virginia Legislature of October, 1783,[47] not more than five

[43] This boundary would have given Iowa about two-thirds of its present area.

[44] Vinton had represented Ohio in the House twenty-one years before, and together with his colleague, Governor Vance, was the only Representative who had witnessed the growth of legislation for the West.

[45] Congressional Globe, Vol. 14, Appendix, p. 330.

[46] Ibid., p. 331.

[47] Based on a Congressional resolution of October 10, 1780, "That

were to be allowed. Justice, then, would require that there should be territory enough remaining west and north of Iowa to make in the future two more States; that a series of small States should be made west of the Mississippi River as an offset to the wrong policy which had prevailed relative to those east of that river. It was further urged that this ought to be the action taken, for the bill itself provided that, "When either east or west Florida shall contain a population of 35,000 inhabitants, it may be divided into two States."

He also argued, very ably, that the power of controlling the Government in all departments might be more safely intrusted to the West than in any other hands. His statement was a novel one at the time, but one whose truth has been set forth before the first half century has gone. The main points in the argument were: That the geographical position and commercial dependence of the West were such as to unite it indissolubly to the East and the South; that the harbors of these sections—New York, Philadelphia, and New Orleans—are also Western harbors; that the West would become an impartial umpire on conflicting claims; or the grain-growing States, slaveholding and non-slaveholding, occupy an intermediate position between their exclusive interests, because interested in the prosperity of both, a position between the two distinct social systems based on free and slave labor; between Massachusetts, where labor had many fields of employment and capital many modes of investment, and South Carolina, where they were devoted to one pursuit. Finally, he argues, with force and suggestiveness, that the great conservative power growing in the West would, if properly used, counteract the active centrifugal elements and in a few short years hush into submission elements of disunion. The people of that

---

each State which shall be so formed shall contain a suitable extent of territory, no less than one hundred nor more than one hundred and fifty miles square, or as near thereto as circumstances will admit."

great valley will forever be conservative, he says, whoever may be otherwise, not because of their superior patriotism, virtue, and love of country, but simply because their position forces them to be so; they must be conservative in spite of themselves. "Disunion is ruin to them. They have no other alternative but to resist it whenever or wherever attempted. . . . That Massachusetts and South Carolina might, for aught I know, find a dividing line that would be mutually satisfactory to them, but, sir, they can find no such line to which the Western country can assent. . . . Lay down the map of the country before you; look, sir, at the wonderful network uniting the West with the North and the South and then let any Northern or Southern man tell me where he would begin the work of its destruction."

Congressman Belser, of Alabama, in the most notable speech in favor of the measure, sets forth the Southern views of the period. He asserted that equality of representation in the Senate and representation in the House according to population was a "part of our social compact, the offspring of amity and concession;" that the idea of balance of power "had not made as profound an impression" in the South as was believed.

His speech was chiefly concerned with the admission of Florida and the consideration especially of the first and fourth objections made to its becoming a State. These points were: (1) "That according to the last census she had not the requisite amount of population to entitle her to admission; (3) that Congress has the discretionary power to admit or not admit her as a new State, and that the constitution presented by her recognizes slavery in a country not included in the compromises of the Constitution." Most attention was given the third, for the Florida constitution contained two clauses which were deemed a "palpable infraction of the Constitution of the United States." These clauses were: (1) "The General Assembly shall have no power to pass laws for the emancipation of slaves; (2) the General Assembly shall have power to pass laws to

prevent free negroes, mulattoes, and other persons of color from emigrating to this State or from being on board of any vessel in any of the ports of Florida."

In the course of his debate he bids in a unique manner for Western influence by setting up that plea which after fifty years, contrary to his expectations, remains one of the chief of political slogans. "The Democratic party," he said, "unawed by the influence of the great, the rich, or the noble, has vindicated the rights of the people, sided with liberty against power. . . ." He said the period of jealousy between North and South had gone by and hereafter it will be with the monopolist and the agriculturist—between power and privilege. "The center of this republic," he says further, "is destined to be in that vast region which is watered by the Mississippi and its tributaries and the organization of new political societies will accelerate the end." [48]

The bill with boundary amendment was passed by a large majority in the House and was sent to the Senate. Here the debate centered on the propriety of admitting the two States in one measure.

Rufus Choate represented the views of the Senate in his statement that "he could most cheerfully and heartily give the hand of welcome to Iowa, but he could not—he would not say constitutionally, but he would say conscientiously—give his hand to Florida." The bill passed the Senate, in the form given it by the House, March 3, 1845.

4. THE CONSTITUTION SUBMITTED TO THE PEOPLE

The people of Iowa had not voted on the Constitution prior to its submission to Congress. A period of some three weeks intervened between its acceptance in Congress and the expression by the voters of their opinion on this document.

Generally speaking, the Whigs were opposed to State-

[48] Congressional Globe, Vol. 14, p. 379.

hood. They were in the minority, held none of the offices, nor could they look forward to changed conditions in the near future. Objections were made to certain provisions of the Constitution, by the press of the territory, regardless of party lines. They objected to the selection of judges of the Supreme Court by the General Assembly; and of Secretary of State, State Treasurer, and other State officers by the people instead of being appointed by the Executive. The severe restrictions on banks and corporations were especially obnoxious and were to be fought over again in the Constitutional Conventions of 1846 and 1857. Other objections were made to the low salaries provided for, which would secure men of inferior qualifications alone;[49] and to biennial sessions of the legislature instead of a short session each year.

Democratic office-holders and politicians favored the acceptance of the Constitution even with the Congressional modifications. Some of the arguments of their Congressional delegate, given in a letter to the people of the territory and favoring adoption were:[50] "Notwithstanding the lessened territory, the new State would have an area of 44,300 square miles"; that a large part of the land of which they had been deprived, known as the "Hills of the Prairie," was barren and sterile, and that the boundary was the one which United States Geologist Nicollet had recommended. He then shows that the "true interest of the West is to have States of reasonable dimension, in order to get due representation in the Senate." Whatever may be the decision of the people with regard to the adoption of the Constitution, he concluded: "We will not be able hereafter, under any circumstances, to obtain one square mile more for our new State than is contained within the boundaries adopted by the act of Congress already passed."

---

[49] The following annual salaries were agreed upon: Governor, $800; Secretary of State, $500; Treasurer, $3000; Auditor, $500; Judges of the Supreme Court, $800.

[50] Letter of A. C. Dodge, March 4, 1845. In Iowa Capitol Reporter, March 22, 1845.

This warning had little effect on the people. The reduced area added strength to the Whig opposition. A few Democrats sacrificed party on this one issue, and despite the imprecations of their former political friends, "stumped" the Territory against the Constitution. Theirs was a campaign of real education. "They thought nothing of the boundary line laid off against slave holding Missouri."[51]

They strove to impress upon the minds of their hearers that if the western boundary of the State were to be seventeen degrees and thirty minutes west from Washington, the limit given by Congress, it would mean the sacrifice of an area almost equivalent to one-third[52] the amount for which they had petitioned. Largely through their efforts the Constitution was rejected in the April election.[53]

4. RESUBMISSION OF THE CONSTITUTION TO THE PEOPLE

General dissatisfaction was prevalent among the Democratic politicians on the outcome. They asserted that the vote was in no sense the voice of the people upon the merits of the Constitution but merely a rejection of the Congressional boundaries. They were urgent, therefore, in their pleadings that the Constitution, as it had come from the first convention, should be submitted to a vote of the people

---

[51] Schouler, History of the United States, IV, page 489. Mr. Schouler is in error on this point. There had been a long controversy over the Missouri boundary. This was not discussed in Congress in connection with the admission of Iowa. It was thought the question ought to go for adjudication before the Supreme Court of the United States. (Congressional Globe, Vol. XIV, Appendix, p. 217.) The bill was filed before that court in behalf of Missouri, Dec. 10, 1847. After many contests, the dispute was finally settled by a commission in 1896. So far as I am aware, the southern boundary was not referred to as an argument against the constitution.

[52] Area of thirty counties. Iowa Historical Record, July, 1896, p. 488.

[53] Votes for the constitution, 6023; against the constitution, 7019. (Iowa Capitol Reporter, Vol. IV, No. 14, May 10, 1845.) On the same day a Democratic Delegate to Congress was chosen by a large majority.

or that a new convention should be called. Through their intervention, the governor was prevailed upon to call a special session of the Legislature.[54] This action was regarded as "unprecedented," revolutionary, by the Whig party in the Territory.

In the Legislature, upon the final passage of a bill to resubmit the original Constitution, the Whigs protested against the text of the Constitution. By it, they said, the atheist is admitted to all of the privileges of a conscientious witness; the governor is given too much power through possession of the veto which virtually constitutes the executive a branch of the legislature. "It prohibits," they said: "the legislature from ever adopting a system of internal improvements, and from the creation of corporations for manufacturing purposes."[55] But the bank clause was the most objectionable. While there was the privilege to establish State banks, under certain conditions, it was believed that these very restrictions would nullify the whole. It was asserted: "No sane man will take stock in a bank where the stockholders are liable in their individual capacity, not only to the amount of stock by them owned respectively but to an unlimited extent." Besides it was thought that the adoption of the Constitution would cause the disappearance of the gold and the silver from the State through the coming in of large quantities of paper money. "A little specie will remain in the State," said one member, "but it will be an article of merchandise and can be had of those consistent advocates of hard money currency, called brokers or shavers, at the market price which ranges, at this ill-fated period, at from twelve to fifty per cent."

The Democratic members met these attacks on the provisions of the Constitution with the often repeated assertion that it was the Congressional enactment alone that

[54] Governor Chambers seemed to favor a new convention. Message, May 5, 1845, Journal House of Representatives, Iowa Territory, 1845, p. 15.

[55] Journal House of Representatives, Iowa Territory, 1845, p. 167.

caused the defeat at the polls. The Speaker of the House,[56] in one of the most notable speeches made in favor of the bill then before them, said:

"A few contended, that if the Constitution should be adopted by the people, an acceptance or ratification of the amendments would not necessarily follow . . . but a large majority contended that the questions were undoubtedly and irrevocably joined, and that there was therefore no opportunity allowed us to vote upon them separately. These conflicting opinions coming together as they did just upon the eve of the election, produced their natural result—a general and wide-spread confusion in the public mind—and, sir, it was in the midst of this confusion and because of this confusion that the Constitution went down. That it sank under the weight of these fatal, odious, and outrageous amendments (no one will pretend to doubt that such was the case) is to me, at least, a not less painful than well known fact, for I was in the field of its struggles, and I can say with confidence that I saw scores of the most devoted friends of the Constitution and of State Government march to the ballot-box and vote against the Constitution upon the simple and avowed ground that they believed that if they voted for it they would at the same time necessarily and unavoidably vote for the Congressional boundaries also."

The bill providing for re-submission was hurriedly passed.[57] Governor Chambers refused to sign it,[58] but it was promptly passed over his veto by a majority of two-thirds of the Legislative Council and House of Representatives.[59]

---

[56] The Honorable James M. Morgan of Des Moines.

[57] It was believed that Congress would agree to the boundaries asked for, because (1) "of a sense of justice; (2) political considerations, the North would be anxious to have them come in as an offset to the new Senators from Florida." Quoted in the Iowa Capitol Reporter, June 7, 1845.

[58] The bill was vetoed on the ground that it should have been voted on by the people before it was submitted to Congress.

[59] Laws of the Territory of Iowa, 1845, ch. XIII, p. 31.

Evidently the modified Constitution had made a bad impression upon the voters, for in the August election they defeated the original draft.[60]

V.—The Convention and Constitution of 1846

Notwithstanding the fact that the Constitution of 1844 had been twice rejected by the people, Governor Clarke, in his message to the Assembly at the opening of the regular session in December, 1845, criticised the work of the opponents of the Constitution and declared the result to have been produced through "misrepresentation and mystification." He again pledged his hearty co-operation with any action which would bring about the "speedy incorporation" of Iowa into the Union as a State.[61] The Assembly was in accord with his opinion and passed an act, January 17, 1846, which provided for the election of delegates to a Convention for the purpose of framing a new Constitution. These delegates, thirty-two in number,[62] two-thirds of them being members of the Democratic party, were elected and met at the capitol in Iowa City on the fourth of May. After a session of only sixteen days a new Constitution was agreed upon.

This Constitution [63] was, generally speaking, a copy of the Constitution of 1844. Of greatest significance were the changed boundaries [64] and the hostility to banks of whatever nature.

---

[60] Vote for the constitution, 7235; vote against, 7656. Shambaugh, Documentary Material Relating to the History of Iowa, No. 6, p. 184.

[61] Message, Dec. 3, 1845, Journal House of Representatives, 1842-45, p. 11.

[62] This small number was doubtless due to the spirit of economy.

[63] "It is strictly a party constitution, full of ultraism and illiberality, such an one as in our opinion is despotic in theory and equally so in practice. The Locofocos, while professing love for the people, have bound them hand and foot." Iowa Capitol Reporter, June 3, 1846. Quoted from Bloomington Herald.

[64] The convention agreed on 43° 30′ for the northern boundary,

I. THE BANK QUESTION

The bank clause was attacked with vigor in the Convention by the Whig members and became the special mark for the shafts of the press of that party. The first Constitution provided, as already indicated, that no bank should be established unless a majority of the electors, at a regular election, favored it. But there was a general fear, of such institutions, prevalent throughout the country. The majority in the Convention determined, while it was in their power, to rid themselves of the evil altogether. Accordingly they decreed in the ninth article of the Constitution that no corporate body should be created with the privilege of "making, issuing, or putting in circulation, any bill, check, ticket, certificate, promissory note or other paper or the paper of any bank to circulate as money," and that the General Assembly should prohibit, by law, any person, persons, or corporation from exercising the privileges of banking. No corporation might be created in the State, except for political or municipal purposes. The stockholders in these were to be subject to all liabilities provided by law and the State was to have no share in any corporation.

This provision was upheld by the Democratic party. It was maintained that the people demanded such a prohibition for they had already rejected the Constitution which did not not make this declaration; that resolutions were adopted in nearly every Democratic convention denouncing banks as the greatest of public evils and asking that they be prohibited.[65] The Whigs believed this one clause ought to be adequate cause for the defeat of the entire instrument. They maintained that by means of banking institutions trade was fostered; that there was good cause for

---

but insisted on the western boundary fixed in the Constitution of 1844. The original area asked for would be reduced 6289 square miles, but Congress must increase its grant 6615 square miles. Congressional Globe, Appendix, Vol. XVI, p. 669.

[65] Iowa Capitol Reporter, Vol. V, p. 15.

their creation for they were to be found in all of the States and in all civilized nations. They asserted that the true policy was to have banks and a circulating medium under State control rather than be dependent on the other States for such a medium; that there was no attempt to prohibit the circulation of paper money and even then there were indications that the State would be flooded with the paper money of all the other States.

2. OTHER FEATURES OF THE CONSTITUTION

Objections were also made to the veto power which had been granted to the governor, "contrary to the will of the people," and to the election of district judges directly by the people. It was claimed that an elective judiciary would rob the courts of justice of their sacred character; that such a system was in vogue at that time in only one State, Mississippi, whose public credit was gone and where life and property were insecure; and that through the use of popular election political partisans would be made judges who in any case would be mere politicians and of necessity second rate men.

Another feature objected to by the Whig party was the provision that internal improvements were to be carried on by direct taxation. It was held that if these improvements were to be carried on only in this way, that they would draw on capital which might be employed to greater immediate advantage in other ways and that it would prohibit the use of foreign capital then obtainable at a reasonable interest.[66]

An interesting feature of the Constitution of 1844 was the clause on amendments and especially the distinction made in it between the methods of amendment and "revision or change." Amendments were to be made by the process of legislation and submission to the people as follows: "Any amendment or amendments to this Constitu-

[66] Iowa City Standard, July 22, 1846.

tion may be proposed in the Senate or House of Representatives, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment shall be entered on their journals, with the yeas and nays thereon, and referred to the General Assembly then next to be chosen, and shall be published for three months, previous to the time of making such choice; and, if, in the General Assembly the next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people in such manner and at such time as the General Assembly shall prescribe, and if the people shall approve and ratify such amendment or amendments by a majority of all the qualified electors of the State voting for and against said amendment or amendments voting in their favor, such amendment or amendments shall become part of this Constitution. . . . The General Assembly shall not propose the same amendments to this Constitution oftener than once in six years." But any "revision or change" was to be made only through a Convention whose delegates were elected for that purpose.

The Convention of 1846 stipulated that no change whatever was to be made in the Constitution except through a Convention, the calling of which had been sanctioned by the people at a regular election and whose delegates were to be chosen within six months after the people had agreed to it. Such a method was regarded by the Whig opposition as a mere trick to prohibit amendments altogether and thus insure the carrying out of the obnoxious bank clause and the "principles of hard money." This plea was ably set forth by the Whigs and is said to have had much to do in bringing about the calling of a new Convention in 1857.[67]

[67] Some of the other modifications of the Constitution of 1844 by that of 1846 were as follows: 1. Any citizen of the State who should be engaged, either directly or indirectly, in a duel was to

VI.—Iowa Becomes a State

Meanwhile, the Iowa Congressional Delegate, A. C. Dodge, introduced a measure to repeal so much of the original act as related to the boundaries of Iowa.[68] The discussion of this bill was delayed until June 8. The following letter of May 10 indicates the somewhat novel position of a territorial convention and explains the language no longer conciliatory, of its Delegate: "If Congress will give us our boundary, it will insure the adoption of the Constitution; if they delay all further action on this subject until their next session, it will not interfere with its adoption. If adopted, we will organize the State, send our members and Constitution to Congress, and risk the consequences. This much I have said for others of the convention as well as myself."[69]

June 8, the bill came before Congress for discussion. It was strongly opposed by Rockwell of Massachusetts, Rathbun of New York, and Vinton of Ohio. Rockwell advocated 42° N. for the northern boundary line instead of 43° 30′ provided by the bill. Rathbun asserted that the people had not rejected the Constitution on account of the boundary provided for, but because of dislike for the prinples in the constitution itself. He set forth a principle, later of great moment in his entreaty to the House, "to remember that one of the chief ingredients in our safety was to maintain a due proportion and balance between the power of the Northern and the Southern States." To this end he objected to the forming of "large States at the North and

---

be disqualified from holding any office in the State. 2. The Senate was to choose its own presiding officer instead of having a Lieutenant-Governor. 3. The Governor was to be elected for four years, and Judges of the Supreme Court for six years. 4. The Superintendent of Public Instruction was to be elected by the people, instead of being chosen by the Legislature.

[68] Act of March 3, 1845.

[69] Letter to Hon. A. C. Dodge from Enos Lowe, later governor, dated Iowa City, May 10, 1846.

small ones at the South." Especially was this of importance when Texas by her act of admission was to be allowed to form "four or five States." Vinton again made a telling speech. He set forth the real meaning of the discussion in his reference to its position before the last House. "This subject of creating States beyond the Mississippi," he said, "had been fully discussed and no question except that of Texas had excited more interest in the House." He even saw the conditions which were to be almost realized at the close of the first half century from that time when he says: "No part of these United States possesses an equal capacity for maintaining an immense population. . . . This valley will in process of time contain two-thirds of the population of the Union.[70]

Very interesting is it to note the entire change of front of the Iowa delegate, who shortly before[71] urged the people to accept the Congressional boundaries, for they "would not be granted a single additional square mile of territory." Now he acts under instructions, "accept no amendment which should cut them off from the Mississippi and the Missouri rivers." Congress, by the recommended "arbitrary and artificial lines, would cut the river Des Moines, which was the chief river of Iowa and on which the ultimate seat of government[72] must be placed, directly in two." "It was most unfortunate for us, sir," he said, in answer to the opposition, "that the bill for our admission came before this House when gentlemen from a certain section of the Union, however much they may attempt to deny the fact, were smarting, aye agonizing under the then recent annexation of Texas. In their frenzy to preserve what they regarded

[70] Population of Iowa in May, 1843, 80,000. Journal Constitutional Convention 1844, p. 208. Population of Iowa in May, 1846, 120,000. Journal Constitutional Convention 1846, p. 108.

[71] March 4, 1845, Iowa Capitol Reporter, March 22, 1845.

[72] By the Constitution of 1857 the capital was permanently located at Des Moines, and as an offset to this removal the State University was located in Iowa City.

See Constitution, 1857, Art. X, sec. 8.

as the balance of political power between the slave and non-slave-holding States they were prepared to do almost anything to override the deliberately considered report of one of the most respectable committees of the House, and to vote in favor of State lines, of the propriety and expediency of which they knew almost nothing." [73]

During the months of June and July, the Whigs of Iowa kept up an active campaign against the Constitution. But it was of no avail, for the Constitution was adopted August 3, 1846, by a majority of 456 votes.[74]

August 4, President Polk signed the bill which provided for the boundaries already voted by the people. December 28, 1846, the Commonwealth of Iowa was "declared to be one of the United States of America."

VII.—The Calling of the Constitutional Convention of 1857

The Constitution of 1846 was not satisfactory and was opposed from the outset. The clause relative to the establishment of banks was especially obnoxious. As already noted, it provided that "No corporate body shall hereafter be created, renewed, or extended with the privilege of making, issuing, or putting in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money. The General Assembly of this State shall prohibit by law, any person or persons, association, company or corporation from exercising the privileges of banking or creating paper to circulate as money." It was hoped, by such a measure, that the people of Iowa would be free from the abuses of the banking systems then generally prevalent throughout the Union. The

[73] Congressional Globe, Appendix, Vol. XVI, p. 669.

[74] Iowa City Standard, Sept. 16, 1846. Shambaugh, Documentary Material Relating to the History of Iowa, No. 7, p. 213. Number of votes for the Constitution, 9492; number of votes against the Constitution, 9036.

legislature attempted to enforce this clause by a stringent act to the effect, that, "Any attempt to issue and circulate bank paper or paper to be used as money," should be made a penal offense with a fine of $1000 and imprisonment of one year in the county jail.

In spite of such legislation every expedient was resorted to in order to evade the law and create paper money. Iowa was surrounded by States which allowed the issue of paper currency, and her private bankers soon learned how to supply the State with this currency. Much of it was of the cheapest sort and brought on the evils wont to accompany such a circulating medium. A member of the Convention of 1857 exclaimed: "Notwithstanding we are prohibited in Iowa from issuing paper money, we have just as much bank paper here as any State of the Union where banking is allowed, and we are cursed with as worthless shinplasters as any State in this Union. If we had a sound, safe, and reliable circulating medium of our own under our own control, we would be able to protect the people from the vast amount of worthless trash now brought here for the purpose of circulation among us." [75]

---

[75] Iowa Constitutional Debates, 1857, Vol. I, p. 351.

"This money, mostly the issues of the State stock banks of Illinois and other western States, we used in our ordinary business at all rates of discount, as quoted in the bank note detectors of the time, but it could not be used for paying taxes or buying eastern exchange, or entering public land."

Lathrop, "Some Iowa Bank History," Iowa Historical Record, April, 1897, p. 58.

One of the worst offenders was the Territory of Nebraska, which had been organized in 1855. There were no restrictions upon the power of the Legislature to charter all the banks which might be called for. The first company incorporated by the Nebraska Legislature was an Insurance Company. It was organized March 16, 1855, under the name of the Western Fire and Marine Insurance and Exchange Company. By a stretch of the powers of this corporation, which was given the right to deal in all sorts of exchange, and was also enabled to do a general banking business. "Thus the wild-cat got itself surreptitiously into existence as the Western Exchange Bank of Warren."

Nebraska State Historical Society Collections, II.

Besides, extortionate rates of interest were charged, varying from a minimum of 15 per cent to 25 per cent and as high as 50 per cent on real estate security.[75]

The press, which had opposed this clause early, began to call for a convention which should so amend the Constitution as to allow banks to be created and thus rid themselves of "shavers, usurers, and extortioners."

Finally, the minds of the people were so aroused against the Constitution of 1846, and chiefly against the anti-bank clause, that the General Assembly passed an act, January 24, 1855, which provided for ascertaining the will of the people on the calling of a convention to "revise or amend the Constitution." The result of such a vote in the regular August election of the following year showed that there was a large majority in favor of a convention.[78]

VIII.—The Constitutional Convention of 1857

The convention met at Iowa City, January 19, 1857, and was in session until March 5. It was composed of thirty-six members, twenty-one of them being Republicans and fifteen Democrats.[79]

I. THE BANK PROBLEM

It was acknowledged by the members of both political parties that some system of banking was to be allowed

---

This was the one institution, among many others in Nebraska, which furnished large quantities of its bills for circulation in Iowa. This bank went down in the general collapse of 1857. When its affairs were closed out, it possessed $191.30 in specie and $121 in bank notes of banks which were considered good.

[76] Iowa Standard I, No. 31, New Series, Jan. 20, 1847; Dubuque Daily Times, July 24, 1857; Constitutional Debates, 1857, Vol. I, p. 348.

[77] Iowa Standard, Jan. 20, 1847.

[78] For a convention, 32,790 votes; against a convention, 14,160 votes. Shambaugh, Documentary Material Relating to the History of Iowa, No. 8, p. 221.

[79] Dubuque Daily Republican, July 25, 1857.

under the Constitution which they were about to frame.[80] No other question was discussed at such length and the debates indicate a careful study of the systems then in vogue in the other States. Granted that they were to have banks, many questions then arose as to the kind which were to be established. Were they to have a State bank with branches, the system then favored in the other States? Was there to be the opportunity for the State Legislature to establish a general system of banking under proper restrictions or was the way to be left open for the establishment of both kinds.

Those favoring the State bank with branches, under legislative supervision, believed it would be the best system, for then there would be good reason for the parent bank to keep careful supervision of the branches. Each part of the system would thus be responsible for every other part. They also believed that with such a system the trust funds of the State might be safely deposited with them which could not safely be done under a general banking system. It was further asserted that another advantage which this plan might have would be that the bills issued for circulation would pass at par in other States which could not obtain where local banks were set up under a general banking law. The stock argument offered in favor of a free banking system was that it was more democratic. Why might not any one who could provide the requisite security become a banker just as easily as he might enter any other business? A State bank with branches, it was asserted, is nothing more or less than a monopoly. Whatever the differences might be as to the method of establishing banks there was little dissent from the view that no State bank should be established unless it were on an actual specie basis; that the bill-holders should have the greatest possible protection; and that individual stockholders should be held for all liabilities.

[80] Four of the thirty-six members were anti-bank men.

In the main, the clause as finally agreed upon seems to resemble, most nearly, the provision in the New York Constitution of 1846.[81] It was provided that no act of the General Assembly authorizing a corporation or association with banking powers should be in force until it had first been determined that the people were in favor of it as shown by a majority vote at a special or general election. No State bank might be established unless it were founded on an actual specie basis and each of the branches should be held responsible for the "notes, bills, and other issues" of the other banks. It is further provided that "if a general banking law shall be enacted, it should provide for the registry and countersigning, by an officer of State, of all bills or paper credit designed to circulate as money, and require security to the full amount thereof, to be deposited with the State Treasurer, in United States stocks, or in interest-paying stocks of States in good credit and standing, to be rated at ten per cent below their average value in the city of New York, for the thirty days next preceding their deposit; and in case of a depreciation of any portion of such stocks, to the amount of ten per cent on the dollar, the bank or banks owning said stocks shall be required to make up said deficiency by depositing additional stocks; and said law shall also provide for the recording of the names of all stockholders in such corporations, the amount of stock held by each, the time of transfer and to whom."[82] Every stockholder is to be held responsible to the bank creditors over and above the amount of stock held, "to an amount equal to his or her respective shares, so held, for all of its liabilities accruing while he or she remains such stockholder." In case any banking association becomes

[81] "Iowa, in the same year, went further than New York in seeking to secure a safe system of banking. If a State bank was established by the Legislature, it should be founded 'on an actual specie basis,' etc." Thorpe, Constitutional History of the American People, 1776-1850, II, pp. 433, 434. Evidently the Constitution of 1857 was in the mind of the author.

[82] Constitution of 1857, Art. VIII, sec. 8.

insolvent, the bill holders are to constitute the preferred creditors. No suspension of specie payments by banking institutions is ever to be allowed and any change in the laws for creating or organizing corporations or for the granting of special privileges may be made only when agreed to by two-thirds of both branches of the Legislature.[83]

2. THE RIGHTS OF THE NEGROES

The question as to the relative position which the negroes were to occupy in Iowa was not of less interest in the discussions of the Convention than those on the banks. One member exclaimed: "From the commencement of the sessions of this Convention, this nigger question has been lugged in here in fifty different propositions and in fifty different ways. The nigger question seems to be a great theme with the majority of this Convention."[84] It is somewhat surprising that there should have been so much attention paid to it when there were at that time only some three hundred negroes and mulattoes in the State.[85]

---

[83] The Seventh General Assembly passed two bills which provided for banks. One was entitled "An act authorizing general banking in the State of Iowa," and another, "An act to incorporate the State Bank of Iowa." The second was carried with a larger majority of votes. In the Senate the vote stood twenty-eight to four, and in the House, forty-two to eighteen. Both measures were adopted by the people. No banks were ever formed, however, under the General Banking Law. In September, 1858, the "State Bank of Iowa" and the "Branches of the State Bank of Iowa" were organized.

No banking business proper was done by the State Bank. This was to be left to the branches after "at least five should be organized."

At the outbreak of the Civil War there was no money in the State Treasury, and the branches of the State Bank came to the assistance of the State by loaning it the money necessary to raise and equip the troops. Because of the heavy taxation on the issues of the State banks, the State Bank of Iowa closed up its business in 1865 and the branches reorganized as National Banks.

Lathrop, "Some Iowa Bank History."

Iowa Historical Record, April, 1897, pp. 61-64.

[84] Iowa Constitutional Debates, Vol. II, p. 826.

[85] Iowa Constitutional Debates, Vol. II, p. 834.

The report of the Committee on Education forced the first discussion. This report recommended that a school should be kept in each district at least three months in each year.[86] In the substitute offered, it was provided that there should be a school in each district for six months and that such schools were to be free of charge and open to all. It was felt that injustice had been done the negroes through a legislative provision which excluded them from the schools and school privileges altogether.[87] The sentiment finally prevailed that natural rights would be best protected if all children were to be granted the privilege of securing an education. A final substitute stated that the education of "all the youths" of the State was to be provided for in the common schools of the State.[88]

Many States, and especially Illinois and Indiana, had precluded negroes from holding property.[89] Some of the delegates in the Convention advocated that "other persons not being citizens," should be included in the clause which guaranteed to foreigners all the rights of native-born citizens in the possession, enjoyment and descent of property. This amendment was lost,[90] for it was believed that such a guarantee would be an inducement for large numbers of negroes to enter the State. There was also the belief that since there had been no such law passed, such a check on legislation in the body of the Constitution was unnecessary.

Of greater interest still was the discussion which arose over the right of negroes to give testimony in the courts. It seems that the successive Legislatures had, prior to that of 1856-57, declared that "no negro, mulatto, or Indian, or black person, should be a witness in any court or in any case against a white person."[91] This law had been repealed

[86] Iowa Constitutional Debates, Vol. II, p. 825.
[87] Iowa Constitutional Debates, Vol. II, p. 835.
[88] Substitute passed by a vote of 22 in favor and 10 opposed. Iowa Constitutional Debates, Vol. II, p. 837.
[89] Iowa Constitutional Debates, Vol. I, p. 132.
[90] Iowa Constitutional Debates, Vol. I, p. 138.
[91] Iowa Historical Record, July, 1896, p. 490.

by the Legislature then recently adjourned.[92] Issue was at once taken by the Democratic party in their State Convention, in which the repeal was denounced. The Republican Convention supported the action of the Legislature with equally great ardor. This act, it was stated by the opposition, would induce large numbers of negroes to enter the State;[93] that slaves would be compelled, by their masters, to commit perjury; and that the negro under the best of conditions did not possess that natural integrity to be found among white men. The decision was finally made in the Constitutional Convention, an advanced position at the time, that "any party to a judicial proceeding shall have the right to use as witness, or take testimony of any other person not disqualified on account of interest, who may be cognizant of any fact material to the case."[94]

Was the militia to be composed only of "all able-bodied white male citizens between the ages of eighteen and forty-five? If the negroes were to be accorded privileges such as the Convention was inclined to grant them, then, it was thought by some of the delegates, they should be called upon also to defend their country.[95] It was claimed that negroes had already acquired a good reputation for such services. One member declared that there were, in his opinion, "some colored people who might be spared even to put into the first ranks in case of an invasion."

By far the most notable discussion took place over the resolution that "at the same election in which the Constitution should be submitted to the people the proposition to amend the same by striking out 'white' whenever it occurs

---

[92] Iowa Constitutional Debates, Vol. I, p. 172.

[93] Iowa Constitutional Debates, Vol. I, p. 177. This assertion was made many times regardless of the fact which was set forth, that Connecticut, the only New England State which then had a constitutional provision recognizing a distinction in classes, had a greater number of negroes in proportion to her population than "all other New England States together."

[94] Constitution of Iowa, Art. I, sec. 4.

[95] This motion was lost.

in the Constitution should be separately submitted to the electors of the State for adoption or rejection."[96] The whole question of slavery was put on trial and party lines were closely drawn. Some noteworthy speeches were made setting forth the views then becoming prevalent throughout the North. Said one member:[97] "Slavery is a foul political curse upon the institutions of our country; it is a curse upon the soil of the country, and worse than that, it is a curse upon the poor, free, laboring white man. I have known many cases of honest, hard-working, plodding white men, who have come to my native city for the purpose of making a support for themselves and families, and they have been driven away in consequence of the degradation attached to labor as a result of this system of slavery. That is the reason that Virginia is becoming depopulated, until she has now become merely the slave-breeding State of this Union.

"I do not know whether it would be an advantage or not to the negro to confer upon him the right of suffrage. I have hoped, and I hope yet, the day will come when the fetters shall be stricken from all this unfortunate race. Aye, and the day will come, as sure as there is a just God in Heaven. . . . I have spoken here of apologists of slavery. Gentlemen say, who are those who stand up here and defend slavery? Is there any one here who advocates slavery? I tell you, gentlemen, that if they do not advocate slavery with their lips, in so many and direct terms, they exert an influence and power in regard to it that is the very backbone of the institution in the South. What! Is the Democratic party in favor of slavery? Let me tell them that during the last Presidential canvass, there were scattered broadcast throughout the whole length and breadth of this State speeches delivered by Stephens, Toombs and others, of the

[96] New York had granted negroes the privilege of voting, provided they were possessed of property to the amount of two hundred and fifty dollars.

[97] Constitutional Debates, Vol. II, p. 682.

Southern wing of the Democratic party. In my own town more than one hundred of these speeches came there in one package. Who received and circulated these speeches of Stephens and of Toombs, the Ajax in Congress of the Southern and pro-slavery wing of the Democracy? The Northern Democracy received and circulated them. What did those speeches contain? They contained the declaration that slavery was a divine institution; that it came from God; that it was right for one portion of the human race to hold another portion in bondage; that slavery was a beneficent institution; that it was a great blessing and should be extended all over the land, so that wherever the flag of our country should wave, there the white man should be protected in his property in his fellow-man."

This was replied to as follows:[98] "This is the position which the Democratic party stand upon. They say: We have made a contract with the South. That contract has been sealed with the best blood of the revolution, and was again most solemnly declared in the Constitution of the country, that upon this great question there should be no politics betwixt us. Let it alone. Touch it not. That is the language of Democrats, both North and South. This question shall be buried deep in oblivion. The institution shall be local, and depend upon the people acting as a people in their several capacities wherever they may be associated as a people, whether in a State or Territory. . . . The Democracy of the North and the Democracy of the South unite upon that principle. It is the principle which will hold our Constitution together. It is the principle which will prevent this Union from being severed; and it is the only one. . . . Hence we continue our old relations with these people. We stand as we did four years ago. We stand as we did eight years ago. We stand as we did twelve years ago. And we can have a victory in the South as well as in the North, because it is a victory without this agi-

[98] Constitutional Debates, Vol. II, pp. 688, 689.

tating question of slavery in it. We can fraternize with the people then as we have ever done. This is the reason why we are called by these flippant speakers, the slaveocracy of the country. It is because we discard this agitating question. It is because we turn it over to the people to whom it belongs; because we wish to take from the people of this State the power of governing the people out of the State. This makes us odious to these modern Republicans." [99]

A few members favored the exclusion of negroes from the State altogether and recommended that the article then found in the Constitution of Indiana, which prohibited negroes from entering the State be adopted.[100]

3. OTHER PROVISIONS OF THE CONSTITUTION

Among the other significant provisions made in the Constitution are: The security of the School and the University funds; the location of the capital at Des Moines and the State University at Iowa City; and the method of passing bills by the State Legislature. The school funds of the State had been much reduced because of mismanagement, and it was thought best to provide against any future permanent loss to these important funds by making adequate constitutional provision against it. This condition was met by the following clause: [101] "All losses to the permanent

---

[99] The proposition to strike out the word "white" from the Constitution failed in the August election by a vote of 40,000. Daily North West, Sept. 18, 1857.

[100] Iowa Constitutional Debates, Vol. II, p. 913. The question was lost by a vote of 25 to 8.

[101] Constitution, Art. VII, sec. 3. Other changes made were: The period in which the census was to be taken was changed from two years to ten years (Art. III, sec. 33). The Governor's term of office was fixed at two years (Art. IV, sec. 2). A Lieutenant-Governor was also to be chosen. He is to be ex-officio president of the Senate and to succeed the Governor in case of his death, resignation or inability to serve (Art. IV, secs. 3, 17, 18). The Judges of the Supreme Court are to be elected by the people (Art. V, sec. 3). An Attorney-General and District Attorney is pro-

school or University fund of this State, which shall have been occasioned by the defalcation, mismanagement, or fraud of the agents or officers controlling and managing the same, shall be audited by the proper authorities of the State. The amount so audited shall be a permanent funded debt against the State, in favor of the respective fund, sustaining the loss, upon which not less than six per cent annual interest shall be paid. The amount of liability so created shall not be counted as a part of the indebtedness authorized by the second section of this article."

In Iowa, as in most of the new States, local feeling was aroused through the attempt to agree on permanent locations for the various State institutions. Here, as elsewhere, the connection between such institutions and the rise of land values was not lost sight of. An act had already been passed by the Legislature, providing for the removal of the capital from Iowa City to Fort Des Moines. Was this act to be made a part of the Constitution? Many accusations of bribery were made against the legislators who had sanctioned the change. The following measure, largely a compromise, was adopted: "The seat of government is hereby permanently established, as now fixed by law, at the city of Des Moines, in the county of Polk; and the State University at Iowa City, in the county of Johnson."[102]

The Constitution guards, too, against the harmful legislation which is wont to occur in the closing days of a Legislature.[103] It says: "No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the General Assembly, and the question upon the

---

vided for, to be elected by the people (Art. V, secs. 12, 13). The limitation of State indebtedness is increased (Art. VII, sec. 2). A permanent school fund is insured (Art. VII, sec. 3). Amendment might be made by the legislature or a convention. The question of the convention is to be voted on by the people every ten years (Art. X). Debates of Convention, Vol. II, p. 1066 et seq.

[102] Constitution, Art. XI, sec. 8.

[103] Constitution, Art. III, sec. 17.

final passage shall be taken immediately upon its last reading, and the yeas and nays entered upon the journal."

The Democratic press and party opposed the Constitution from the outset.[104] Are the lectors willing, the question was asked, to change their organic law to benefit the money-eyed interest and Black Republican party of this State, whose great object is to create a wild-cat system of banking and place the negro upon an equality with the white man. There was one change only which was conceded to be necessary. By this, the time of the general election was placed in October instead of August.[105]

IX.—Amendments of the Constitution

The Constitution of 1857 has been amended four times. The first amendments were approved by the Eleventh General Assembly, April 2, 1868, by the Twelfth General Assembly, March 31, 1868, and received the required majority vote of the people in the general election of that year.[106] These amendments, dealing wholly with the status of the negroes, were as follows:

1. Strike the word "white" from Section one of Article two thereof.[107]

2. Strike the word "white" from Section thirty-three of Article three thereof.[108]

---

[104] North Iowa Times, June 26, 1857; Dubuque Daily Times, July 25, 1857. Votes cast in favor of the Constitution, 40,311; votes cast against the Constitution, 38,681. Shambaugh, Documentary Material Relating to the History of Iowa, No. 8, p. 260.

[105] Changed to Tuesday next after the first Monday in November by the amendment of Nov. 4, 1884.

[106] Shambaugh, Documentary Material Relating to the History of Iowa, No. 8, pp. 260-267; Horak, Constitutional Amendments in the Commonwealth of Iowa, pp. 30-32.

[107] This amendment gave the negro the right of suffrage. Votes in favor of the amendment, 105,384; votes against the amendment, 81,119.

[108] By this amendment the negroes were included in the State census. Votes favoring the amendment, 105,498; votes opposed to the amendment, 81,050.

3. Strike the word "white" from Section thirty-four of Article three thereof.

4. Strike the word "white" from Section thirty-five of Article three thereof.[109]

5. Strike the word "white" from Section one of Article six thereof.[110]

But the negro was still precluded from being elected to the State Legislature. This political inequality between the two races was erased through an amendment to the Constitution finally adopted November 2, 1880.[111]

March 17, 1880, the celebrated prohibitory amendment was passed by the Eighteenth General Assembly. This proposed to add to Article one, Section twenty-six as follows: "No person shall manufacture for sale, or sell or keep for sale as a beverage, any intoxicating liquors whatever, including ale, wine and beer. The General Assembly shall by law prescribe regulations for the enforcement of the prohibition herein contained and shall thereby provide suitable penalties for the violation hereof."[112] The act was approved by the Nineteenth General Assembly, March 13, 1882, and was submitted to the people at a special election, June 27, 1882.[113] A large majority of votes was recorded

---

[109] By these changes the negro was included in the basis of representation for the election of Senators and Representatives to the General Assembly. Votes in favor of amendment, 3,105,524; votes opposed to amendment, 3,081,038; votes favoring amendment, 4,105,502; votes opposed to amendment, 4,080,929.

[110] This amendment included the negro in the State militia. Votes for the amendment, 105,515; votes opposed to the amendment, 81,050.

[111] By this amendment the words "free white" were struck from the third line of sec. 4, Art. III. Votes in favor, 90,237; votes opposed, 51,943. Shambaugh, Documentary Material Relating to the History of Iowa, No. 8, p. 272.

[112] Reprinted from the Acts of the Eighteenth General Assembly of the State of Iowa, p. 215. Given in Shambaugh, Documentary Material Relating to the History of Iowa, No. 8, p. 273.

[113] Shambaugh, Documentary Material Relating to the History of Iowa, No. 8, pp. 274, 275.

in its favor,[114] but it was declared invalid by the Supreme Court of the State.[115]

A joint resolution passed the Nineteenth and Twentieth Assemblies of the State and became a part of the fundamental law after receiving a majority vote of the people, November 4, 1884. These amendments provided: 1. The general election for State, district, county, and township officers shall be held on the Tuesday next after the first Monday in November.[116] At any regular session of the General Assembly, the State may be divided into the necessary judicial districts for district court purposes. or the said districts may be reorganized and the number of the districts and the judges of said courts increased or diminished; but no reorganization of the districts or diminution of the judges shall have the effect of removing a judge from office.[117]

3. The Grand Jury may consist of any number of members not less than five, nor more than fifteen, as the General Assembly may by law provide, or the General Assembly may provide for holding persons to answer for any criminal offense without the intervention of a Grand Jury.[118]

4. That Section 13 of Article V of the Constitution be stricken therefrom, and the following adopted as such section. Section 13. The qualified electors of each county shall, at the general election in the year 1886, and every two years thereafter, elect a county attorney, who shall be a resident of the county for which he is elected, and shall

---

[114] Votes in favor of the amendment, 155,436; votes opposed, 125,677; scattered votes, 36. Shambaugh, Documentary Material Relating to the History of Iowa, No. 8, p. 276.

[115] Horak, Constitutional Amendments in the Commonwealth of Iowa, p. 32. In the test case of Koehler vs. Lange, 60 Iowa Reports, p. 543. The decision was based on the argument that in its transmission from the Eighteenth to the Nineteenth General Assembly, there had been a change in the meaning and effect of the amendment.

[116] Votes cast in favor of, 89,342; votes cast against, 14,940.

[117] Votes in favor of, 64,960; votes against, 33,868.

[118] Votes for, 72,591; votes against, 30,343.

hold his office for two years, and until his successor shall have been elected and qualified.[119]

The Constitution of 1857 is still in force in Iowa. Many other attempts have been made to amend it, but these requests have never received the requisite legislative sanction. That the people have been, in general, well satisfied with their Constitution has been demonstrated by the very large majority of votes cast against the proposition: "Shall there be a Convention to Revise the Constitution and Amend the Same," in the years 1870, 1880 and 1890.[120]

---

[119] Votes cast for, 67,621; votes cast against, 32,902.

[120] In 1870, votes favoring a convention, 24,846; votes against, 82,039. In 1880, votes favoring, 69,762; votes against, 83,784. In 1890, votes favoring a convention, 27,806; votes against, 159,394. Reprinted from Election Records. Shambaugh, Documentary Material Relating to the History of Iowa, No. 8, pp. 281-283.

THE CHURCH AND POPULAR EDUCATION

SERIES XVIII Nos. 8-9

JOHNS HOPKINS UNIVERSITY STUDIES

IN

HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics are present History.—*Freeman*
Education of the people is the first duty of democracy.—*Jules Siegfried*

THE CHURCH AND POPULAR EDUCATION

BY HERBERT B. ADAMS.

BALTIMORE
THE JOHNS HOPKINS PRESS
AUGUST-SEPTEMBER, 1900

Copyright 1900, by
N. MURRAY

The Lord Baltimore Press
THE FRIEDENWALD COMPANY
BALTIMORE, MD., U. S. A.

TABLE OF CONTENTS

		PAGE
I.	Historical Introduction	8
II.	Types of the Institutional or Educational Church	15
III.	Educational Work of Baltimore Churches	38
IV.	Educational Duty of American Churches	75
V.	Select Bibliography	82

THE CHURCH AND POPULAR EDUCATION

I.—Historical Introduction.

From the time of the foundation of the English colonies in North America the church, in one historic form or another, has been an educator of the people. As in ancient Jewish and early Christian society, so in the modern world the ministers of religion have been also exponents of culture. The Puritan colonists of New England came from their mother country with their own college-trained pastors and teachers, who quickly organized local churches in those settlements which fringed the coast of Massachusetts Bay.

The formation of new towns and parishes was legally conditioned by the ability to establish a church and to support a learned and faithful minister. In every town and village community in New England, as afterwards in New York, Ohio and the Great West, the pastor was the recognized leader of his flock in all things, social, spiritual and intellectual. In some of the larger communities of Massachusetts, there were two shepherds of the people, a pastor and a teacher or a teaching elder,[1] according to

[1] By Act of the Massachusetts Legislature in 1640, was instituted a Board of Overseers for Harvard College. Besides the Governor and magistrates are mentioned "the teaching elders of the six adjoining towns; viz.: Cambridge, Watertown, Charlestown, Boston, Roxbury and Dorchester." There were two sorts of elders in the Puritan church, ruling or lay elders and *teaching* elders. In the latter class belonged both the pastor and the teacher. In the so-called "Cambridge Platform" the offices of pastor and teacher were, however, distinct. The pastor's special work was preaching or exhortation. The teacher was to attend to doctrine and administer a word of knowledge. The early churches of Massachusetts had both a pastor and a teaching elder, but motives of economy

Puritan custom, ancient practice, and Biblical precedent. The functions of the "teacher" were to assist the pastor and instruct the people, especially at some week-day "lecture," which was usually on a religious subject. To this day the old Puritan custom of giving "a preparatory lecture" is kept up by the minister once a month in New England churches as a kind of week-day qualification of church members for the holy communion on the following Sunday. To "lecture" a class or an individual is still a popular synonym for a hortatory discourse. On Fast Days and Thanksgivings, which were and still are American holy days, the Puritan minister usually indulged in a very practical discourse bearing on current events and urging the people to definite social or political reforms. Loyalty to God and public duty was always the theme of the New England preacher and teacher. In these modern days when, in France as well as in the United States, the inculcation of civic ethics and true patriotism is becoming an acknowledged duty in education, this early Puritan precedent should not be forgotten.

The institution of schools[2] and schoolmasters in New

---

quickly drove the churches to the employment of only one minister, who combined both functions, that of pastor and that of teaching elder. See Williston Walker's "History of the Congregational Churches in the United States," p. 226.

[2] On the "First Common Schools in New England," see the late Dr. George Gary Bush's articles in the *New Englander* for March and May, 1885. See also Dr. Bush's "Harvard, the First American University," Boston, 1886. Harvard College was named in 1637 in honor of the Puritan minister who gave it about £400, the first private endowment, and his private library of 320 volumes. The General Court had previously (1636) agreed to give £400 towards a school or college. It was ordered in 1647 that every township which the Lord had increased to fifty householders should appoint some one to teach reading and writing, and that any town with one hundred families should set up a grammar school, the master of which should be able to fit youth for the university. The Connecticut legal foundations of education resemble those of Massachusetts.

"When it was felt that the time had come for a second college in New England, a company of Connecticut Congregational min-

England was the direct outgrowth of ministerial influence upon the law-makers of the first colonies of Plymouth, Massachusetts and Connecticut. The phraseology of and historic comment on those early laws which established common schools, grammar schools and colleges, show that the underlying motive for all these foundations was to continue the supply of an educated ministry for the churches, good leaders for the State, and to prevent the extinction of learning among the people. In New England local history there is nothing more characteristic of those simple religious communities, wherein town and church were practically one in spirit, than the systematic support of preaching and teaching.

The colonial and town records of Massachusetts and Connecticut fairly teem with shining examples of loyal devotion to the cause of public education, which was identified with the public weal. In days when there was but little money in circulation and when even food was not abundant, townsmen in Connecticut as well as in Massachusetts willingly paid their peck of Indian corn to help sustain poor scholars at Harvard College. The Latin grammar schools in Boston, Roxbury, New Haven, Hadley, and other ancient towns are standing local proofs of the original and abiding influence of the Puritan clergy upon the popular maintenance of sound learning for the benefit of Church and State. Throughout the entire history of New England the leaders of the people have sprung from the folk and were graduates of these old academies or Latin grammar schools, of which there still are many noble and enduring types. The modern public high

---

isters in 1700 took the initiative, gave to it the first donations and decided what should be its character and aims. The original corporation consisted of ten Congregational ministers, who had power to fill their vacancies. From that day to this the majority of the governing body of what is now Yale University have been Congregational ministers. All its presidents from Abraham Pierson to Timothy Dwight have been Congregational ministers" (Dunning's "Congregationalists in America," p. 364).

schools are, in many cases, simply popularized or converted classical academies, founded in colonial or early times by the combined influence of the Puritan public spirit and private philanthropy, both of which ethical qualities were and are still nourished by the church in every New England community, where free public libraries[3] are modern fruit on the same old tree.

Innumerable are the historic examples of men and institutions that sprang from New England Puritan planting. To name New England men prominent in Church, State and College would be to catalogue anew the star graduates of Harvard, Yale, Dartmouth, Williams, Amherst, Brown, and Bowdoin colleges. To specify institutions would require a review of the colonial, ecclesiastical, educational and local life of New England. The history, literature, laws and culture of the East and of the West are now permeated with the historic influence of English Puritanism transplanted to American shores.

Puritanism was not confined to New England, but asserted itself strongly, and at times triumphantly, in Virginia and Maryland. Other religious elements of no less vigor entered into the constitution of American colonial society. Among these elements were the Scotch-Irish Presbyterian, the French Huguenot, the Dutch Reformed, the Quaker, and the Moravian. All these became locally established along the Atlantic seaboard and all sprang up in personal, institutional or educational forms, in preachers, teachers, churches, schools, seminaries or colleges. The

[3] See H. B. Adams on "Public Libraries and Popular Education," Home Education Bulletin, State Library, Albany. A movement has been started by Mr. Baxter, the State Superintendent of Schools in New Jersey, to provide more libraries throughout the State, and to interest educational authorities in establishing closer relationship between the libraries and the public schools. This movement began long ago in New England and New York, but it is now in process of extension in other States, and is encouraged by the National Educational Association as well as by the American Library Association.

mother churches, the Anglican and the Catholic were slow but no less sure in their educational planting. The parishes of Maryland, Virginia and the Carolinas abound in historic examples of "free schools" or classical academies.

In a monograph recently published by the U. S. Bureau of Education (Circular of Information No. 1, 1899), Dr. David Murray, of New Brunswick, N. J., has given us a valuable account of early popular education in New Jersey and of the origins of Princeton University and Rutgers College. Professor John De Witt, D. D., who supplied a chapter on Princeton, says: "In presenting the origin of Princeton College, one can best begin by repeating the statement that during the first half of the eighteenth century by far the strongest bond uniting a large portion of the population of southern New York, East and West Jersey, and the province of Pennsylvania was the organized Presbyterian Church. It constituted for these people a far stronger social tie than the common sovereignty of Great Britain, for this sovereignty was manifested in different forms in the different colonies; and except in Pennsylvania, where the proprietary's spirit of toleration had fair play, it neither deserved nor received the affection of the colonists. In the important sense the British rule was that of a foreign power. The New Englanders in East Jersey were settlers under a government in whose administration they had no share. Far from controlling, they could with difficulty influence the political action of the governor and his council. In southern New York the Dutch were restive under the English domination. In New York City and on Long Island the relations between the Scottish Presbyterians and New England Puritans on one hand, and the English Episcopalians on the other, were often severely strained; and it was only the latter to whom, on the whole, the King's representative was at all friendly. In Pennsylvania there were English Friends, Germans who had been invited by Penn to settle in the eastern counties of the province, and Scotch-Irish Presbyterians. The last-named immigrants

landed at the port of Philadelphia in large numbers and took up farms in the rich valleys between the mountain ranges. From the 'Irish settlement' at the union of the Delaware and the Lehigh, where the city of Easton now stands, to Harris Ferry, on the Susquehanna, now the capital of the State, there were many Presbyterian communities; and from these, in turn, moved new emigrations to the great valley, called the Cumberland Valley, north of the Potomac, and, south of that river, the Valley of Virginia."

The continuation of these Presbyterian streams of culture from Virginia into Kentucky and the historic origin of Transylvania University have been lately shown by Dr. A. F. Lewis, a graduate of old Princeton and of the new Johns Hopkins University, now Professor of History in the University of Arkansas, through which State educational forces are now moving on. (U. S. Bureau of Education.)

In 1693, William and Mary College, the Harvard of the South, was founded at Williamsburg, Virginia, through the combined influence of Commissary Blair, the Church of England, and the royal family. From that one academic planting in the colonial capital of the Old Dominion sprang many of the intellectual and religious forces of Virginia and the South. A list of the alumni of old William and Mary College reveals the framers of the law, the makers of States, the upbuilders of this American Union. Edmund Randolph and George Mason, Jefferson, Marshall and many others are on that roll of honor. Of that old Church College, George Washington was the first American Chancellor, succeeding in that office the Bishop of London. The history of William and Mary College would of itself demonstrate the historic debt of the whole South to the Church of England.

Another church foundation was Kings College, now Columbia University, in New York City, the *alma mater* of Alexander Hamilton, perhaps the greatest genius in American politics. The son of a Scotch farmer and a French

mother, he was born in the West Indies in 1757, brought up in French society, and trained by a Scotch-Irish Presbyterian, the Rev. Hugh Knox, D. D. Introduced to Americans by Dr. Knox, Hamilton left the West Indies in 1772, and fitted for Kings College, New York, at a classical grammar school in Elizabethtown, New Jersey. A broad-minded Catholic American, he early became the opponent of Samuel Seabury, of Connecticut, the first bishop of the United States of America, consecrated in Scotland in 1783. An Anglo-American, Hamilton fought by the side of another churchman, George Washington, for the independence of the United States and became the greatest of all its constitutional defenders. Such was the son of a Scotch emigrant from Ayrshire, who married the daughter of a French Huguenot, Faucette, in the English island of Nevis. Fit forerunner of other things national and international in this New World of ours.

For their liberal policy in the higher education of promising sons of the common people, New York, New Jersey, New England and old Virginia, indeed every English colony in North America, reaped a rich reward. Everywhere the graduates of grammar schools and colleges recruited the ranks of pastors, teachers, historians, lawyers, physicians and educated men. From such Latin schools as Boston, New Haven, Elizabethtown, Annapolis and Williamsburg came the patriotic churchmen and statesmen of the American Revolution. The makers of our State Constitutions and of our Federal Government, the framers of the Ordinance of 1787 for the government of the Northwest territory, the original and historic policy of territorial expansion and republican organization from ocean to ocean, grew out of that broad and enlightened church policy first developed in the schools and colleges of Massachusetts, New York, New Jersey and Virginia. Remove from our Revolutionary and Constitutional History such educated men as Samuel Adams, James Otis, Patrick Henry, Edmund Randolph, James Madison, Rev. Dr. Manasseh

Cutler, Nathan Dane, Chief Justice Marshall, Thomas Jefferson and Daniel Webster, and you have removed conspicuous representatives of great popular forces which made possible American Independence and Federal Expansion. With the gradual extension of the principles of the Ordinance of 1787 went two fundamental ideas of New England—religion and free schools—and also Jefferson's noble ideas of the gradual extinction of human slavery and the establishment of local self-government.

In the United States, as in the mother country and in United Christendom, the school was the daughter of the church. Everywhere in North America the support of popular education, in elementary and higher forms, is fostered by ministers and other clergy. Whatever the sect or denomination, whether the church be Catholic or Protestant, it everywhere and always sustains, in some form or other, the educational interests of the common people and thus continually revives its own intellectual and social forces from the original sources of power. There is no more remarkable proof of this historic American policy than the continuous founding and unwavering support of denominational schools, seminaries, colleges and universities throughout the land. The long historic process still continues in the establishment of a university in Chicago and of a Catholic University in Washington. This development process is by no means ended. It will perhaps result, as did the history of the thirteen English colonies, in some higher federal development for educational or institutional union and for the greater good of the whole country. Signs of the times are not lacking in the federal association of colleges and universities in Canada; in the numerous affiliations of the University of Chicago; in the associate relations of Methodist colleges and churches to the American University at Washington; in the growing centralization of Catholic education in a great university near the Federal City; and in the gradual drift of American scientific and historical interests towards Washington,

where flourish the scientific departments of the United States Government. Already the Smithsonian Institution has become the clearing-house of American scientific and historical publications for the nations of the civilized world.[4]

II.—Types of the Institutional or Educational Church.

There is a new name which has come into current use among American churches of different denominations within the past few years. It describes a popular church organization in which great stress is laid upon the social, educational, industrial, philanthropic, missionary, practical, remedial and physical sides of church life and activity. The "Institutional Church" does not neglect the spiritual or distinctly religious aims of Christian organization, but it does not confine its ministrations to the Sunday services of the sanctuary, to week-day prayer meetings, or to money contributions for foreign and home missions, still less to perfunctory duties of the more conventional ecclesiastical sort like the christening of children and the burial of the dead. "It does not move mechanically, but magnifies the personal element." The Institutional Church is dominated by the spirit of the Living Christ, and through its many ministers, both lay and clerical, goes about like him doing good.

This active Christian spirit has never been absent altogether from the historic church in any age or any historic country. From the beginning of the French and English colonies in North America educational and missionary ideals have not been lacking. Everywhere and always the Church, both Catholic and Protestant, has provided for the teaching of youth, the visitation of the sick, the care of the

[4] For further development of these ideas, see new chapters by the present writer on "Educational Extension" in the current report of the U. S. Commissioner of Education, 1900.

poor and helpless, as well as for the conversion and salvation of sinners here and now. The devoted work of the Jesuit missionaries in Canada; the translation of the Bible by John Eliot for the Indians of Natick among whom he dwelt; the residence of John Woodbridge and Jonathan Edwards among the Stockbridge Indians; the Indian Schools out of which grew Dartmouth and William and Mary colleges; the colleges and universities elsewhere planted by the church; the libraries founded in the South by Dr. Bray and the Society for Promoting the Gospel in Foreign Parts—all tend to demonstrate that Institutional Christianity, Education, Church Extension, and Library Extension are no new things in America.

But undoubtedly, with the progress of social and democratic ideas in America, there has come over the Church as well as over the State, larger and more comprehensive ideas of Christian duty and public usefulness. There was a time when Protestant notions of the practical value of a meeting-house were confined chiefly to Sunday worship in family pews reserved like private boxes, and to an annual town meeting in spring-time; but times have changed. The era of free pews and open churches is returning. The construction and use on week-days of social rooms in connection with church buildings for class, club and library purposes is noticeable in many old-fashioned orthodox churches which do not see fit to call themselves "Institutional"; and yet they are full of Christian institutions of the most modern sort. Look over the "Year Books," or published reports of any great city church like St. Bartholomew's, New York, and see what homes of charity, education, good literature, art, music, physical culture, spiritual health, and social regeneration some modern churches have already become. Sometimes the intellectual, literary, and industrial facilities are so numerous that the complex of institutions deserves to be truly called "a Christian College" or a People's University, a *Hotel Dieu* for Education and Charity. History is simply repeating itself. Given a Church and a School, the Library,

and perhaps a Hospital will quickly follow. Are not the colleges of Oxford the daughters of the mediæval Institutional Church? Cambridge is an offshoot from the bishopric of Ely, and the schools of Paris grew up around Notre Dame Cathedral.

The connecting link between the old order and the new in the United States is undoubtedly the Sunday School, historically as old as the training of catechumens in the primitive church, but practically new when Robert Raikes began on Sundays to teach reading, writing, and arithmetic to the poor, churchless children of Gloucester in 1780. His example was taken up by the Non-conformists in England, Scotland and America; and finally also by the Church of England. It was primarily missionary work for the churches on home ground, and such it has since remained. In England, in our own time, there have been a powerful revival and extension, in the great industrial towns, of the original feature of Sunday School work, *i. e.* secular as well as moral instruction, useful knowledge, such as history, literature, and natural science. For a long time in America it was thought necessary to have only religious or Biblical instruction on Sundays. Efforts were made to restrict Sunday School Libraries[5] strictly to pious books, but the result

[5] "Much has been accomplished," says Miss Martha T. Wheeler, in *Library Notes*, July, 1892, "during the last twenty-five years toward the improving of what is known as Sunday school literature. The typical Sunday school book, at one period a thing of tiresome little saints who died early and were emulated only by the morbid, . . . is now in disrepute. For this we are greatly indebted to the work carried on by the various circles of readers of Sunday school literature, which have undertaken to examine and report upon books, publishing lists of those approved, with, in most cases, descriptive notes."

For a reference list of such descriptive catalogues of approved books for Sunday school libraries, see Appendix to Elizabeth Louisa Foote's handy little volume on "The Librarian of the Sunday School," containing a reprint of Miss Wheeler's paper on "The Sunday School Library," New York, Eaton & Mains, 1887. Of suggestive value is Caroline M. Hallett's "Parish Lending Libraries," London, Walter Smith & Innes, 1888.

was a surfeit of jejune, goody-goody writings. Now it is gratifying to see, in the Year Book of Trinity Church, Boston, for 1898, that the committee on the Sunday School Library, after reading and discussing 70 books, accepted and added to a good collection then numbering 1,300, the following 40, which are here mentioned simply as a sign of the times:

Dickens' Christmas Book.
Plants and their Children.
What Katy Did.
King of the Golden River.
Captain January.
The Lamplighter.
Swiss Family Robinson.
Fishin' Jimmy.
Granny Bright's Blanket.
Robinson Crusoe.
Hawthorne's Wonder Book.
The Adventures of a Brownie.
Deephaven.
Evangeline.
Idylls of the King.
A Little Country Girl.
Back of the North Wind.
Castle Daffodil.
Sir Gibbie.
John Halifax, Gentleman.
Stories of the American Revolution.
Master Skylark.
Rosemond of the Seventh.
Tom Brown.
Cranford.
Robbie and Ruthie.
The Winds, the Woods and the Wanderer.
Hildegarde's Holiday.
Meg Langholm
Cat's Arabian Knights.
Heir of Redclyffe.
Tale of Two Cities.
Two Years before the Mast.
Boots and Saddles.
Captains Courageous.
Bunker Hill.
Talisman.
In the Choir of Westminster Abbey.
Torpea Nuts.
Woodie.
Parents' Assistant.
Quentin Durward.
Wardship of Steepcombe.
A Norway Summer.
A Man without a Country.
The Boys of '76.
Flipwing the Spy.
Bracebridge Hall.

TRINITY CHURCH, BOSTON.

Trinity Church, where the late Phillips Brooks did his noble work, now has a "staff" of assistant ministers. The Rev. E. Winchester Donald is the Rector. He is the author of that suggestive modern book entitled "The Expansion of

Religion," a series of lectures given originally to the Lowell Institute in Boston. They well illustrate the spirit and tendencies of Christianity in what was once known as Puritan Boston. A select list of the practical activities of Trinity Church will serve to show what is now going on in that great city church, which is at once a sanctuary, and the centre of many modern Christian institutions. In addition to the Sunday School, Missionary Societies, and other conventional institutions of the Church, we find:

(1) The Charitable Society, oldest of the various organizations of Trinity Church and dating back more than fifty years. Before other societies were formed, it combined an industrial element with practical work of relief and care of the sick and poor. Other societies have been differentiated from the original institution.

(2) The Industrial Society organized in 1866 to provide work for poor women who are paid by money subscribed by the ladies of the parish.

(3) Employment Society, a more specialized organization for the purpose of cutting out clothing to be made up by poor women. The articles made are either sold at moderate prices or given away to charitable institutions.

(3) The Visiting Society of which the Rector is president. The Society employs a large number of volunteer visitors and keeps a record of all cases of rescue and relief.

(4) Indian Mission Association, which attempts good work among American Indians and colored people. In the Indian field, Bishop Whipple is the veteran leader.

(5) Women's Bible Class, which provides a wide range of study and discussion for those who cannot attend the usual Sunday School.

(6) Zenana Mission and Zenana Band. These are organized societies for social and educational work in India.

(7) The Girls' Friendly Society, one of the objects of which is to bring girls together in a simple, natural way that they may have a chance to become interested in and help each other.

(8) Brotherhood of St. Andrew, a widely extended church society for the development of a spirit of helpfulness among young men. The Rector himself gives instruction in Church History. A Bible class is sustained and a visiting committee makes calls upon young men attending Trinity Church.

(9) The Library Committee, which reads and considers books fit for admission to the parish library. A representative list of forty books approved in 1898 has been already printed.

(10) The Trinity Club, an organization meeting from time to time for literary exercises and social progress. Among the addresses given one season were the following: (1) The Lambeth Conference, by Bishop Lawrence; (2) Recent Investigations in American Archæology, by Professor W. F. Putnam, of Harvard University; (3) Clouds and Kites, by Mr. Clayton, of the Blue Hill Observatory; (4) Australia, by Professor G. L. Goodale, of the Botanical Museum of Harvard University; (5) Ancient Breech Loading Cannon, by Dr. C. J. Blake. One evening there was a general debate by club members on "The Incendiary and Irresponsible Utterances of the Public Press." The work of this club illustrates the educational tendencies of the modern city church.

(11) Home for Aged Women, primarily of Trinity Parish. Each inmate pays, either herself or through friends or church connections, the sum of $4 per week. The home is not a hospital.

(12) Trinity House, a home and shelter for those who need employment and education. The Rector himself is Chairman of the Board of Managers, and the institution employs Matrons, Assistants, and Teachers. Various departments of the House are maintained, *e. g.*, a Laundry, a Nursery, and Industrial Classes. *The Trinity House Laundry* employs any worthy woman who is willing to learn and is seeking a permanent position elsewhere. While at work in the laundry, women can leave their children in the nur-

sery upstairs. *Day Nursery.* The scope of this work is not confined to the care of children brought to Trinity House for the day, but also aids and relieves distressed families. It cooperates with the Massachusetts Society for Prevention of Cruelty to Children and provides homes for neglected waifs. The children of the nursery are sometimes taken to the Seashore Home at Beachmont to pass a week. Children's outings are frequently enjoyed on the electric cars to City Point and Franklin Park. *Girls' Industrial Classes, e. g.,* the Laundry Class, the Mending Class, the Little Housekeeper's Class, the Evening Cooking Class. *Trinity Pawnshop* does not seem to have been a practical success.

The annual offerings of Trinity Parish, including those only which pass through the several parish treasuries, aggregated for one year over $34,000. Among the various objects were the following: Foreign, Domestic, Diocesan and City Missions; Hospitals, Homes, etc.; Trinity House; Sunday School; St. Andrew's Church (a kind of Trinity Church colony); Theological Education; Lent Music; Christmas and Easter Festivals; Negro Schools; General Relief through Societies; Church Temperance Society; Aid to Students in College; Phillips Brooks Memorial; Cuban Relief.

ST. GEORGE'S EPISCOPAL CHURCH, NEW YORK CITY.

A pioneer of Institutional Church work is St. George's in New York City. The Rector is the well-known W. S. Rainsford famous as a preacher as well as a practical reformer. Institutional work began in 1883 and in its various features represents some of the most helpful and progressive modern church movements. Adjoining the church in Stuyvesant Square is St. George's Memorial House, the centre and home of the most varied institutional activities. It is a five-story building lighted by 500 electric lamps. On the first floor are those departments or offices which deal most directly with outside work, for example the medical, grocery, and clothing relief departments. There also are

the rooms of the Circulating Library, the Girls' Friendly Society, and the Brotherhood of St. Andrew. On the second floor is the main Sunday School room, with rooms for the vestry meeting, the business office, and the keeping of parish records. The upper floors are occupied by the Men's Club, the Battalion Club rooms, Gymnasium, the sexton's family and the clergy. This Memorial House was built in 1888 as a memorial to Mr. and Mrs. Charles Tracy. The house is one of the very best illustrations of the institutional side of a great city church. Pictures of St. George's and of its Memorial House, in East Sixteenth Street are given in the Year Book for 1898. Without interfering with the hours of religious service, which is maintained every day in the week, there are many educational and social classes in progress in this Memorial House. On week days it is a veritable hive of industry and education. On Sundays the whole House, including even some of the clergy rooms, is turned into a Sunday School building. Some of the institutional features of St. George's are worthy of special mention:

(1) *The Gymnasium,* a picture of which is shown in the Year Book for 1898. The apparatus for developing health and muscle is quite up to date. The clergy offer medals for athletic competition and the "Rector's Cup" is given for the all-round championship. Outdoor work is also encouraged, *e. g.,* cross country walks and cross country runs. The New York police force is recruited by young fellows who have been trained in St. George's gymnasium.

(2) *The Church Periodical Club.* This feature of institutional effort has been copied by many American churches. It consists in members or friends of St. George's forwarding copies of papers and magazines, books of reference and up-to-date literature, to the Periodical Club for remailing to mission houses and mission stations far and wide over the country. This kind of literary mission is one of the most useful and educational forms of Christian activity.

(3) *Seaside Work.* St. George's maintains a summer cot-

tage at Rockaway Park, Long Island, to which in one season 36 excursions were made by mothers with their little children. Members of various Sunday School and other classes, under good supervision also visit the Church cottage by the sea. The building is only 120 feet from the surf and a large pavilion, with tables all around the sides faces the ocean. Excursionists bring their own basket lunches while the cottage furnishes tea, coffee, and milk. Two hundred people are provided for at one time. The house accommodates forty guests, who sometimes stay from Monday morning until Friday night free of charge. Bills of fare are printed in the Church Year Book and the beneficial influence of wholesome diet upon people who need sea air and a wholesome change can be imagined. The cottage is open for about thirteen weeks, from June 18 until September 17.

(4) *District Visiting.* St. George's Parish employs 64 district visitors, who make it their duty to look after the physical, mental, and moral welfare of certain families who need help and encouragement. It is noteworthy that St. George's and other modern churches are profiting by the methods and results of the Charity Organization Society in our large cities.

(5) *Evening Trade Schools.* St. George's Parish supports evening classes in carpentry, drawing, printing, plumbing and manual training. Expert instructors are employed for these classes, which are held at 520 East 11th Street. Commencement exercises, however, are held in the Memorial House. The importance of this kind of practical teaching to those who have their own living to make in the world can be appreciated.

(6) *Sewing Schools and Kindergarten Classes* are also maintained. Little girls are taught to do housework by kindergarten methods and with miniature utensils.

(7) *Teachers' Meetings.* An earnest attempt is made to teach teachers by holding teachers' meetings in which improved methods of instruction are fostered. There is also

a teachers' preparatory class conducted by an expert who has had long training in the public schools. This method meets a great want in Sunday School work where teachers are often practically untrained and unsuited for their responsible work.

(8) *Chinese Sunday School.* Every Sunday afternoon in the parish building there is an English school for teaching Chinese. Efforts have been made to secure the services of a superintendent understanding the Chinese language, but without much success. The Chinese plainly prefer English-speaking teachers and some educational good is undoubtedly accomplished by these church classes.

It is impossible in this brief digest even to mention all the numerous and varied activities of St. George's Church, but an examination of the Year Book embracing 228 pages will convince any reader of the wide-reaching educational, social, moral, and religious influences proceeding from St. George's Parish. It has various working centres and mission rooms in different parts of New York City. The annual expenses are over $100,000.

ST. BARTHOLOMEW'S CHURCH, NEW YORK.

The Year Book of this Church is one of the most instructive and realistic presentations of modern institutional activities, religious, social, and educational. In a volume of 363 pages, there are not only good descriptive accounts of the various missions, societies, clubs, and schools, but also interesting pictures of Parish House exteriors and interiors, the chapel, the choir, the Chinese Sunday School, the German mission, the Girls' Club (class in Literature), the Girls' Glee Club, Girls' Drawing Room, Dormitory, Men's Club, and Men's Class in Literature, Men's Thursday evening lecture course, Boys' Club, Foot Ball Team in Practice, Clinic, etc.

In looking over these pictures taken from real life in a modern church building, one is disposed to inquire whether the mural decorations of mediæval cathedrals, representing

imaginary Biblical scenes, were really more religious than are these modern illustrations of religion put into human life and practice. There has lately been placed upon the sanctuary wall of St. Bartholomew's a beautiful memorial picture of "The Light of the World," by Francis Lathrop. The scene presented is an artistic realization of Mark XIII:26-27: "The Son of Man coming in the clouds with great power and glory. And then shall he send his angels, and shall gather together his elect." Both methods of suggesting the coming of Christ on earth, the pictorial or artistic, and the social or institutional, have their moral and religious justification. They supplement one another.

Many of the forms of institutional or applied Christianity, which impress the modern beholder, find their home and administrative centre in St. Bartholomew's great Parish House, itself the embodiment of many practical charities. The building has eight or nine stories and a vast number of rooms for clubs and classes, guilds and societies, chapel services on week-days as well as Sundays, for congregations of different nationalities (Swedes, Germans and Armenians), a Clinic ministering daily to the sick and suffering poor (itself a very practical form of divine healing), Kindergarten ("suffer little children"); loan and employment bureaus (how much superior to the pauperizing methods of mediæval times!); St. Andrew's Brotherhood for Christian helpfulness; a Lyceum Hall for free popular lectures given by the Board of Education; Wednesday and Saturday evenings; St. Elizabeth missionary society; Kings Daughters' Circles; Social Teas for Women; a Parish Printing Press. All this besides Chinese and other regular Sunday Schools!

The Parish is a light-house of Christian friendliness for great numbers of homeless people seeking help or work: Hebrews, Bohemians, Armenians, Germans, Italians, and Americans. The Chinese school is especially well attended. At least one hundred Chinamen come on Sunday from near and remote points to receive instruction. "The men's eagerness for knowledge, their steadfastness in attendance, and

their utter lack of the pauper spirit, as evinced by their liberal offerings, all show potentialities in the Chinese character which may easily be developed."

Besides giving religious and other instruction, the Chinese Guild endeavors to protect persecuted Chinamen in New York City. To one accustomed to hearing of attacks made now and then upon Americans or Germans in China, it will be profitable to note the following cases attended to in one year by Guy Maine, Superintendent of the Chinese Guild:

Chinamen assaulted by ruffians	63
Chinese places robbed by ruffians	14
Window smashing and other annoyances from boys	752

There is evident need of Boys' Clubs in New York City. The following rules of the St. Bartholomew's Boys' Club show that the managers know how to grapple with young barbarians in matters fundamental to all education, but not always learned at school or college:

1. Swearing and the use of profane or obscene language of any kind in any part of the Club is positively forbidden.

2. Sitting upon the table or putting feet on the tables or chairs is forbidden. Defacing or destroying any of the furniture, apparatus, or other property of the Club which is in Club-room, or building, is forbidden.

3. No misconduct allowed in the Locker or Bath Rooms.

4. No sparring, boxing, or wrestling is to take place in the Reading-room under any circumstances.

5. Cutting, tearing, or removing any of the papers or magazines or throwing them about upon the table is strictly forbidden.

6. Books from the Library can be kept out only two weeks. A fine of one cent per day will be charged over the specified time.

7. Initiation Fee, One Dollar. Dues, Fifteen cents per month, payable in advance.

8. Members must pay their dues promptly or they will be suspended from the Club.

9. A member can be suspended by the Superintendent until the Board of Governors takes action on his case.

10. All notices referring to class work and other matters of interest are posted on the bulletin board.

The Girls' Club of St. Bartholomew's has three divisions: (1) The Senior Club, for young women over seventeen years of age; (2) the Junior Club, for girls over fourteen years of age; and (3) the Afternoon Club, for school girls. Members must pay an initiation fee of 25 cents and monthly dues of 25 cents. The advantages offered are the use of club-room and library, physical culture classes, lectures, talks, entertainments, discussion class, glee club and literature class. There are penny provident and mutual benefit funds. Members can join one class a week in either dress-making, millinery, cooking, embroidery, drawnwork, or system sewing. For a small fee a girl can join a class in stenography and typewriting, or in system-cutting. Girls' Club members enjoy the opportunity of spending two weeks' vacation at Holiday House, Washington, Connecticut, accommodating 53 guests at a time. Club members can also obtain board at the Girls' Club Boarding House.

The Evening Club has a membership of 720 older girls. The evening classes in cooking, typewriting and stenography, calisthenics, and American Literature are the most popular. There is a Girls' Club Library of some 600 volumes. The Traveling Department of the New York Circulating Library also sends the Girls' Club 50 volumes at a time. Lectures, stereopticon exhibitions, and concerts are frequently given. In the Girls' Club of both St. George's and St. Bartholomew's, members are allowed to dance as students now do in our best colleges for young women.

During the past ten years, St. Bartholomew's Church has expended over two and a half million dollars for practical Christian work, roughly classified as follows:

For work among the poor	$ 211,000
For work in the Parish House	252,000
For the Parish House itself, equipment and endowment	857,000

For the maintenance of church worship.....	399,000
For improvement and equipment of Church.....	142,000
For support of Church Missions	86,000
For other parochial purposes	67,000
Foreign Missions	60,000
Diocesan Missions	179,000
Domestic Missions	172,000
Miscellaneous missionary objects	138,000
	$2,563,000

This colossal outlay for Christian charity and education, averaging $256,300 per annum, exceeds the expenditure of many an American college and university and gives some idea of the magnitude of the work of a great city church. The ramifications of its efforts are too numerous to be traced out in this connection, but it will well repay any student of contemporary life to inquire into the budget and activities of the modern Institutional Church in any large town.

THE JUDSON MEMORIAL, NEW YORK CITY.

This is an institutional monument to Adoniram Judson, a pioneer American missionary in Burmah. The church is a large handsome structure costing about $422,000, situated on Washington Square. The present pastor is the Rev. Edward Judson, who has lately published a little book on his society through Lantilhon & Co., 78 Fifth Ave. The west end of the building is a home for a large number of children. There is a combined apartment and boarding house which yields the church a revenue of over $10,000 per annum. The church building contains social headquarters for young men, also a day nursery, a kindergarten, and a dispensary. Sewing classes, mothers' meetings, lectures on domestic hygiene are features of this institutional church, which began work in 1884.

BERKELEY TEMPLE, BOSTON.

This is a characteristic institutional church begun in 1888. Its special features are the Young Men's Institute, and the

Young Women's "Dorcastry." Classes are taught in dressmaking, painting, clay modeling, physical culture, and current events. Popular but inexpensive entertainments are given to large audiences throughout the winter in the public auditorium. Theological Seminary students from Andover spend Saturday and Sunday at Berkeley Temple prosecuting various lines of good work under pastoral direction. Sunday School work is carefully graded. Sunday evening services in the Temple are always crowded, for popular subjects are presented and great prominence is given to good music. In the winter season much is done to aid the unemployed and destitute. "*The Berkeley Beacon*" is the monthly organ of this institutional church and describes its various branches of social and educational work.

RUGGLES STREET BAPTIST CHURCH, BOSTON.

This church employs two missionaries to inquire into the needs of destitute families and lends relief in the way of food and clothing. A dispensary and a medical staff with nine physicians, an apothecary and a dentist are maintained. Four buildings are required for the various departments. Educational, industrial, and mercantile classes are fostered. The aim of the church is to raise men "from the lowest physical condition to the highest spiritual."

PILGRIM CHURCH, WORCESTER.

The aim of this society is to be useful every day in the week. It is a social and educational centre for young people. Institutional work began in 1887 with a Boys' Club, organized from the pastor's class. There are now various associations, athletic, literary, and religious, with classes for boys, girls, and adults. The following features are worthy of note: a gymnasium with baths, a reading room, games and familiar talks, a sewing school and a kitchen garden for girls, cabinet work and a printing press for boys. The Pilgrim Church sustains a choral society, which renders oratorios from time to time.

THE TABERNACLE, JERSEY CITY.

Institutional work began here in 1886. The characteristic feature is the so-called People's Palace, which is manifestly an American reproduction of the original People's Palace in London. Stress is laid upon the entertainment and improvement of society as well as its higher spiritual interests. There are facilities for bathing and bowling, also billiards, military drill, gymnasium, and amateur theatricals. Educational and industrial classes are maintained together with cooking schools, mothers' meetings, and sewing classes. The Tabernacle has taken an active part in the campaign for municipal reform. In the summer time much attention is given to outdoor sports by the young men and officers of this society. *The Tabernacle Trumpet* is the literary organ of the institution.

GRACE BAPTIST CHURCH, PHILADELPHIA.

This society began institutional work in 1884 and is familiarly known as the Temple and Temple College, which is its most distinctive educational feature. As many as 2,000 students are connected with it at one time. With its allied departments there are said to be as many as 3,500 persons enrolled. A fee of $50 is charged for a period of nine months at the college. This fee admits one to a broad range of studies. Besides a great variety of educational classes, this church sustains a hospital and a staff of 18 deacons for visiting the vast church membership divided into 12 districts. The young men of the church are organized into a congress wherein public questions are discussed. The women maintain a congress for promoting household science and art. *The Temple Magazine* is the organ of this institutional church.

PLYMOUTH CHURCH, MILWAUKEE.

Institutional work was begun here in 1886 and now occupies a building with thirty class rooms, arranged on four

levels and all connected with the great auditorium. This method of constructing an institutional church is growing in American favor, for in this way the Sunday School can be distributed into a great number of small class rooms and these when necessary can be united with the audience room. In Milwaukee there are many week-day and evening classes in such subjects as printing, stenography, typewriting, telegraphy, chemistry, music, water-coloring, clay modeling, Sloyd, &c. The church has reading rooms and, in summer, country camps.

PEOPLE'S CHURCH, ST. PAUL, MINNESOTA.

This society was organized as an independent church, but is now in Congregational fellowship. It has given prominence to an industrial school and maintains a parish house with various social and educational features. The People's Church has cultivated friendly relations with poor people and has a so-called Salvage Bureau for the rescue and proper clothing of unfortunate families.

PLYMOUTH CHURCH, SALINA, KANSAS.

This institutional church is open all day and every day in the year. It inaugurated a so-called "Salina Plan" for evangelizing rural districts and sustaining preaching services at various local points. Plymouth Church is a kind of metropolitan or home church for these out-stations. The English social custom of a "Pleasant Sunday Afternoon" is cultivated from two to six at the church home. Sunday afternoon stereopticon pictures are sometimes shown to the people. *The Open Church* is the monthly organ of this society.

WESTMINSTER PRESBYTERIAN CHURCH, BUFFALO.

This society, while maintaining the usual religious and Sunday School features, has also established a social settlement known as Westminster House, which maintains a free kindergarten, a sewing school, a working girls' club, boys'

club, a penny provident fund, mothers' meetings, men's social science club, a poor relief department, and one for the care of the sick. This idea of connecting a social settlement with an institutional church is likely to find wide support.

CHAUTAUQUA READING CIRCLES.

An excellent way to encourage historical, literary and scientific study among the young people of a church society is to establish a Chautauqua Literary and Scientific Circle, a local branch of the C. L. S. C. By paying a small fee, fifty cents, to the Secretary, Miss Kate F. Kimball, 321 Huron Street, Cleveland, Ohio, any person can become a member and receive the necessary printed instructions. Every year the members of the C. L. S. C., who are organized in local branches or working individually, pursue a systematic course of required reading. One year the course embraced a History of the Nineteenth Century by Professor Judson, of the University of Chicago; a new History of the English People by Professor Katharine Coman, of Wellesley College; a History of Art by Professor Goodyear, of the Brooklyn Institute, and Winchell's Geology revised by Professor Starr, of the University of Chicago. These books, of moderate cost, are excellent of their kind and no earnest student could fail to be profited by reading them. The course is guided by helpful suggestions and parallel reading in a popular magazine called *The Chautauquan*. Usually each local reading circle chooses as class leader some college graduate or other educated person to conduct the weekly exercises in which the results of home reading are brought out by question and answer and general discussions, accompanied by musical and literary entertainments in pleasing variety. Every year at least 10,000 people carry on this useful work, which is a veritable godsend to rural communities where good books are scarce and where even church society sometimes becomes feeble.

I first observed the beneficial effects of the C. L. S. C. many years ago in a little Congregational parish in the

country town of Amherst, Western Massachusetts. There in the Second Parish the Sunday School Superintendent organized a local Chautauqua reading circle which met weekly throughout the winter season at private houses in the neighborhood. Some of the readers were so enthusiastic and persistent that they completed the four years' course, filling out the required memoranda and obtaining the Chautauqua certificate to that effect. Indeed, the good work still continues in that little parish and is now established in a pleasant local reading room.

I have frequently attended Chautauqua literary and scientific circles connected with Baltimore city churches or meeting in the rooms of the Y. M. C. A. Johns Hopkins University instructors have given systematic lecture courses to such local organizations. The Chautauqua system is easily adaptable to educational work in connection with any church denomination or any Young Men's Christian Association.

JEWISH CHAUTAUQUAS.

During the past few years the Chautauqua system has been successfully pursued by Jewish societies of young people, locally organized throughout this country. Excellent syllabuses of instruction in "Jewish History and Literature" have been prepared and printed under direction of Professor Richard Gottheil, of Columbia College. They are so good that I have used them as a basis for the oral examination of my class in Jewish history at the Johns Hopkins University.

For several seasons the Young Men's Hebrew Association of Baltimore has been accustomed to hold Sunday afternoon meetings and has invited Christian lecturers from the University to give addresses upon suitable religious and historical themes. I myself have lectured Sunday afternoons to young men and young women of the Hebrew faith in the class-room of their own synagogue as well as in their association hall. One of my themes was the educational training of the Hebrews in the land of Egypt, a very safe his-

torical subject. Every year I have a number of Hebrew boys in my college class in Jewish history at the Johns Hopkins University.

THE YOUNG MEN'S CHRISTIAN ASSOCIATION.

In recent years there has been a remarkable development of popular education in connection with the Young Men's Christian Associations in this country. Founded in a liberal spirit, for the purpose of establishing Christian clubs and social centres for young men in our large cities, these associations have grown to be, not merely strongholds of religious activity, but healthy centres of popular education. From the first, every Young Men's Christian Association had its reading room and its lecture hall. In the reading room young men examined in their leisure hours the daily papers of leading cities as well as the chief religious journals. Every winter a more or less popular course of lectures is given under the auspices of the Association. There was and still is perhaps one main fault with this system of general lectures. It is too much of a variety show, like that elsewhere[6] noticed in connection with the Mechanics' Institutes of England, of which our Christian Associations are really an American historical development.

The above defect in the popular educational work of the Y. M. C. A. has been in a measure corrected by the institution of class courses, wherein definite and continuous work is done throughout the entire season by groups of intelligent and earnest young men. Classes in penmanship, stenography, typewriting, writing and spelling, arithmetic, algebra, and bookkeeping, in German, in electricity, in mechanical drawing and designing, in elocution and in singing, have been instituted by the managers of the Y. M. C. A. in Baltimore. The more practical subjects of course attract the larger number of students. It is an excellent thing to encourage young clerks and mechanics to study subjects

[6] H. B. Adams on "University Extension in Great Britain," see Annual Report of the Commissioner of Education, 1899.

which will be helpful to them in business or industrial life. It is also a good thing to interest young men in liberal studies like art, literature, and history so that they may learn better to employ and enjoy their leisure time. As a member of the educational committee of the Y. M. C. A. in Baltimore for several years I have striven to represent this cultural idea over against the more practical, bread and butter studies, which, from motives of self-interest, young men are not so likely to neglect.

Various attempts have been made to conduct classes in American History and Literature at the Y. M. C. A. in Baltimore by Johns Hopkins graduate students. One season a class in Civics, numbering about twenty, met from week to week for the study of American Civil Government, and such special topics were studied as Citizenship, the Voter, Elections, Different Forms of Governments, Departments of Government, the Town, the City, the State, and the Nation. The several departments of Civil Government in Baltimore have been investigated and reported upon by members of the class. One evening a report was read on the Police Department, and it proved of surprising interest.

The work was under the guidance of an experienced teacher, Mr. S. E. Forman, now a Ph. D. of the Johns Hopkins University, who once read an excellent paper on "The Teaching of Civics in the Secondary Schools" at the Sixth Annual Convention of the Association of Preparatory Schools and Colleges in the Middle States and Maryland. Mr. Forman's work in Baltimore was so successful that he was invited to repeat his course under the auspices of the Legion of Loyal Women, 419 Tenth Street, Washington. At the first lecture on "Citizenship" about 300 ladies were present. The discussion which followed was animated and showed that there was real interest in the subject. The club has a large membership, including some of the most progressive women in Washington. Patriotism and public spirit seem to have been the moving ideas in this club course for women.

The following is a syllabus of the topics treated by Mr. Forman in his Washington course of ten lectures on Civil Government:

I.—Citizenship.

1. Who are citizens?
2. Aliens.
3. Naturalization.
4. Privilege of citizens in different States.
5. Rights of citizens.
    1. Right to establish and alter a form of government.
    2. Right to share in government.
    3. Right to protection.
    4. Right to personal liberty.
    5. Right to private property.
    6. Rights arising from relation of
        a. Husband and wife.
        b. Parent and child.
        c. Guardian and ward.
        d. Employer and employed.

II.—The Voter.

1. Qualifications—age, sex, color, residence.
2. Disqualifications—alien, criminal, idiots.
3. Property qualification.
4. Registration laws.
5. Manner of voting—*viva voce*, the ballot, Australian method.

III.—Elections.

1. Time of holding.
2. Officers of election.
3. The polls.
4. Challenging.
5. Canvassing or counting.
6. Number necessary to elect—majority, plurality.
7. Political parties.

IV.—Different Governments.

1. Patriarchal.
2. Theocracy.
3. Monarchy—Absolute, Limited.
4. Aristocracy.
5. Democracy.
6. The Republic.
7. The dual nature of our Government.

V.—Departments of Government.

1. The legislative functions and divisions of.
2. The Executive.
3. The Judicial.
4. Reasons for separation.

VI.—The Town.

1. Origin and history of the word.
2. The town in the South and West.
3. The town in New England.
4. Town meetings.
    1. Manner of holding.
    2. Their political significance.
    3. Their powers.

VII.—The City.

1. Corporations—Nature of.
2. The charter.
3. Government of, under the charter.
4. Territorial divisions of a city.
5. Municipal franchise.
6. Extension of municipal functions.

VIII.—Washington.

1. Selection of site for Federal City.
2. Metes and bounds.
3. Beginnings of the city.
4. The Capitol.
5. Destruction of the Capitol.
6. Washington during the War.
7. Public institutions of Washington.
8. Washington's place in American life.
9. Municipal Government of Washington.

IX.—The State.

1. Discussion of the word State.
2. The original States.
3. The relation of the State to the Nation.
4. The three departments of State government.
5. General features of State Constitutions.
6. Manner of enacting Laws—Petitions, Committees, Bills, Readings, Passage, Quorum.
   Veto, time of taking effect.
7. The judicial system of a State.
8. State officers.
    1. Governor—term of office, manner of electing, qualifications, powers.
    2. Other State officers.

X.—The Nation.

History and study of the Constitution of the United States.

A permanent result of Dr. Forman's experience in teaching civil government in Y. M. C. A.'s and in Women's Clubs appears in an excellent little book entitled " First Les-

sons in Civics" (New York, American Book Company, 1898). After Dr. Forman's successful piece of book making, he entered upon a useful public career as Director of Teachers Institutes in the State of Maryland, lecturing on chosen educational themes in Baltimore and throughout all parts of the State.

III.—Educational Work of Baltimore Churches.

ST. PAUL'S PARISH.

This is the oldest institution in Baltimore, older than the city itself and once comprehending territorially [7] the historical limits of the town. St. Paul's is believed to be one of the original parishes into which Maryland was divided. The parish was organized in 1692, but there was an officiating clergyman, the Rev. John Yeo, about the year 1682. The original St. Paul's Church was on Patapsco Neck six or eight miles from Baltimore.

When Baltimore Town was founded, August 8, 1729, it was within the limits of St. Paul's Parish. The original Act erected a town on the North side of the Patapsco known as "Cole's Harbor," and directed that 60 acres of land should be laid out in 60 lots to be called "Baltimore Town." Such was the beginning of this city, which is at least 37 years younger than old St. Paul's Parish. In 1730, an Act was passed by the General Assembly for the building of a church in Baltimore Town "in St. Paul's Parish." Under this Act, the vestry secured a reservation now bounded by Charles, Saratoga, St. Paul, and Lexington Streets. Among the

[7] The late Hugh Davey Evans considered St. Paul's Parish as bounded on the southeast by the Chesapeake Bay, on the south and southwest by the Patapsco, which divided St. Paul's from St. Margaret's, Westminster and Queen Caroline parishes, and on the west and northwest by St. Thomas' parish, and on the north by the same and by the parish of St. James, which was taken out of St. John's in 1770. On the east St. Paul's Parish was bounded by St. James' and St. John's.

commissioners who laid out the town were three vestrymen of St. Paul's. A little to the north of the centre of the square above mentioned stood the second St. Paul's Church built in 1739. In 1779, it was resolved to build a new church which was completed in the spring of 1784. This third St. Paul's stood somewhat nearer Lexington Street on high ground (since leveled) surrounded on three sides by the parish graveyard. The fourth St. Paul's was built in 1817, but was destroyed by fire in 1854. The fifth St. Paul's was built on the same site and was consecrated by Bishop Whittingham, January 10, 1856.

The Basilican style of the present church architecture is a reminder of the oldest historic church in Rome. In a sermon preached in St. Paul's Church January 27, 1878, the present rector, the Rev. J. S. B. Hodges, speaks of the "Mother Church of the City of Baltimore, which has been foremost in all good works; which has increased and multiplied by separation and division, until to-day there are no less than 30 churches and mission congregations within her bounds, besides charitable institutions which have sprung out from her, or depend largely upon her." In a foot-note to this passage, Dr. Hodges, writing in 1878, says the actual number of these congregations within the present limits of St. Paul's Parish, which is considerably smaller than originally, it is believed to be 43. At the present time, 1900, the number of church societies in Baltimore is far greater.

The oldest educational and charitable institution, developed in connection with St. Paul's Parish, dates from 1799, when Mrs. Elenor Rogers endowed the so-called "Benevolent Society of the City and County of Baltimore," an institution for the maintenance and *education* of poor female children. This society, recruited by money subscriptions, is now generally known as the "Girls' Orphanage." A complete history of the institution was given by Dr. Hodges from early printed sources at the dedication of the present building, November 17, 1894. The orphanage is situated on the corner of Charles and Twenty-fourth streets. It is

under the direction of a deaconess and gives special attention to the practical training of young girls of whom there are about 50 at the institution. Some are sent to the public schools. The main purpose seems to be to provide instruction and a Christian home for orphan girls who are brought up under the best influences which church and school can afford. Besides the deaconess, who is also superintendent, three lady teachers are employed.

The Boys' School of St. Paul's Parish was incorporated under that title March 28, 1853, during the rectorship of the Rev. Dr. Wyatt. The object was to establish an institution for the maintenance and education of poor boys. The good example set by the Girls' Orphanage was plainly followed. For some time the institution was carried on as a day school, but, in 1868, a large house with ample grounds was secured on Saratoga street and Green. The present site of the school is at No.'s 8 and 10 East Franklin street. The present purpose of the institution is to supply a Christian home with good moral and religious education and solid instruction in English studies. If a boy shows capacity for higher training, he is well-grounded also in Latin, Greek, and mathematics, so that he may be fitted for college, for teaching or for the Christian ministry. Some of the scholars are sons of clergymen of the dioceses of Maryland, Easton, and Washington and of families well-born but limited in circumstances. Of the boys in school one year, six were the sons of clergymen living in country parishes on small salaries. Of those already educated seven are now in the ministry in the church. The total number is limited to 30. The school has a headmaster, and assistant master, and a matron. The cost of maintaining the institution is something over $4,000 a year, of which sum more than half is paid by contributions in St. Paul's Church.

St. Paul's House is situated at 309 Cathedral street and is used for Sunday School classes, meetings of the Bishop's Guild, the Women's Guild, and the Men's Guild. Classes or conferences were conducted here by Miss Richmond,

general secretary of the Charity Organization Society. An average attendance of about fifty persons is recorded and representatives of the charitable work of various other churches were represented, together with such secular charities as the Association for the Improvement of the Condition of the Poor, the Kindergarten Association, and the Instructive Visiting Nurse Association. In this way St. Paul's House has become a kind of clearing house for general information on the leading church and secular charities of the City of Baltimore. A little paper called "Parish Notes" representing St. Paul's Church is mailed from St. Paul's House. Besides this useful educational purpose St. Paul's House, under the charge of a matron, has supplied a home department or temporarily a permanent shelter for over 100 women representing almost every branch of work. Young women coming from southern homes, Virginia and the Carolinas, find at this house temporary reception and protection.

The Men's Guild of St. Paul's Parish is composed of three classes of members, honorary, active, and contributing. The minimum subscription is $2 yearly. The Guild employs various committees, numbering five or seven men each. Their functions are to exercise church hospitality, to visit young men who are strangers in the city, to provide entertainments and social meetings and to look after the work of the Guild House. This latter requires the attendance of committee members on certain evenings in the week for educational and social work.

The Guild House at 539 Columbia Avenue, is the centre of a great variety of useful organizations such as an Industrial School, a Boys' Brigade, a Free Kindergarten, a Mothers' Club (on certain days), and a Girls' Friendly Society. Entertainments are provided in the Guild House where there is a gymnasium in which dancing is sometimes allowed. Music and recitations, lectures, lantern views, and picture exhibits form other attractive features.

The Industrial School of St. Paul's Parish meets every Sat-

urday morning from 10.30 to 12.30 and has an average attendance of about 125. St. Paul's Brigade is an organization of boys for physical and intellectual development. Attention is paid to gymnastics and to manual training. A student from the Johns Hopkins University has attempted practical teaching in this Boy's Brigade. "It is startling to find that among 150 boys and men more than ten can neither read nor write." This fact shows the great practical need of night schools and other missionary work among the poor. In St. Paul's Brigade there are numbered "150 boys and men, ranging from children to heads of families; on the list there are names of father and son." Some attempt is made to connect with the evening institute classes in the Y. M. C. A. building.

The Girls' Friendly Society has two meetings each week devoted to entertainment and instruction. St. Paul's Kindergarten endeavors to be self-supporting in some degree. A penny a day from each child provides the wages of an attendant. The Training School of the Baltimore Kindergarten Association sends two of its senior students to the Kindergarten for practice work. These with the paid assistant and the director make up the staff of instructors. In connection with the Kindergarten is the Mothers' Meeting held twice a month.

The Women's Guild is an association of all the parish societies in which the work is done by women, namely the Provident Society, the Mothers' Meeting, the Vestment Society, the Embroidery Guild, and the Church Periodical Guild.

GRACE AND EMMANUEL CHURCHES.

The beginning of the popular educational movement in all of our Baltimore churches, as elsewhere in America, is undoubtedly to be found in Sunday Schools. Mission schools in industrial or outlying districts are simply a form of Church Extension. More than twenty-five years ago, Grace Episcopal Church maintained in its chapel a success-

ful night school for poor boys. It now has on Light Street a flourishing Kindergarten and classes in drawing and sewing. Emmanuel Church has a large, well-lighted annex for evening classes, clubs, and social entertainments. In this chapel have been long sustained, not only morning Sunday Schools, but Sunday afternoon classes for the benefit of Chinese boys and men. They come with great regularity and in large numbers. They are taught in English by faithful Christian women, the leader of whom for many years was Miss Carter, an English lady, and afterwards the late Mrs. Josephine Selden Lowndes of Baltimore, who not long before her death, March 2, 1899, showed me specimens of Chinese written answers to religious questions. The presence of many of these Chinese pupils at her funeral in Emmanuel Church and the good lives that some of them are known to lead prove conclusively that "John Chinaman" is not altogether so mercenary as he has been represented. This kind of home missionary work among the Chinese living in Baltimore has now extended to other churches, but Emmanuel was the first and her work has borne good fruit.

MOUNT CALVARY.

For many years this church, in addition to its religious functions, has been doing a most useful social and educational work among the colored people in the neighborhood of Orchard street. The writer remembers taking Mr. James Bryce and the late Edward A. Freeman to Sunday night service at St. Mary's chapel on Orchard street near Madison avenue, in order to show what good training and choir-discipline could do for colored boys. The religious services are conducted by white clergymen from Mt. Calvary, but the musical and other responses are all given by negro voices. Mr. Bryce expressed his surprise and delight at the phenomenon of a high church service in a church full of blacks whose ancestors, only a few generations ago, were utter savages in the wilds of Africa. Mr. Freeman was equally amazed, in the Orchard Street Methodist Church, to hear an

historical sermon from a negro preacher on the text "The sceptre shall not depart from Judah till Shiloh come." The colored parson was so well versed in Hebrew and other ancient history that Mr. Freeman could hardly be dragged away from the gallery. But the musical performances "really delighted" both English churchmen.

We Americans do not begin to appreciate the educational value of negro churches in civilizing and elevating large congregations of that race. When an onlooker contrasts the superstitions and wild revival scenes of former years in Baltimore, he begins to realize the historic progress here made in decency and order. For this progress, the steady, persistent labors of negro schools and churches deserve great credit.

St. Mary's Chapel is held for the use of the clergy of Mt. Calvary in their work among the colored people. The clergy may adopt plans and methods that they think desirable, without committing the Vestry, the Bishop, or the congregation. In addition to the usual church services and Sunday School, St. Mary's Chapel has the following social activities:

(1) The Sewing School for girls Saturday afternoons.

(2) The Woman's Auxiliary with thirty or forty members, meeting the first Friday of each month after evensong, to foster a helpful missionary spirit among the colored people. They send boxes of clothing to poor missions and visit the sick at three hospitals.

(3) Boys' Club and Communicants' League, meeting every Tuesday afternoon. The League is purely for devotional purposes, but the Club is for the encouragement of song with piano accompaniment. The boys' natural love for music and stories is thus fostered.

(4) The Dorcas Society which meets Mondays at 7.30 after evensong. The members look after and supply choir-vestments. Considerable money was raised to import cassocks from England so that on Christmas the colored singers might wear the correct style.

(5) Mothers' Meeting, each Thursday evening in the schoolroom for sewing and tea drinking, with afterwards a short service in the Chantry.

(6) St. Catherine's Chapel, a missionary station in northwestern Baltimore under the direction of Sister Mary Elizabeth, one of the All Saints Sisters, who reside in a home at the corner of Hamilton Terrace and Madison avenue, near Mt. Calvary Church. The same good work is going on in this chapel as at St. Mary's, *viz.:* the gradual training of an ignorant, simple-minded people to higher and better ideas. The clergy and rector of Mt. Calvary cooperate with the mission, which has the usual Sunday School choral evensong and sermon, and also a Day School, a Boys' Club, a Shoe Club (whose members save up money for shoes!).

(7) St. Mary's Guild, for older girls, who meet at St. Mary's Home for a vesper service. The Guild is to help the members in their higher life and in the work of the church.

(8) St. Mary's House, 409 West Biddle street, Sister Louise, Superior. This is a home of the Sisters of St. Mary's and All Saints and of about 20 little colored boys.

(9) St. Faith's Guild, for girls just confirmed or about to be confirmed.

(10) St. Mary's Cadets, about 50 boys who meet for military drill Tuesday evenings in a large school room. One of the clergy acts as chaplain and treasurer and, at the conclusion of every drill, there are prayers and an address.

(11) Industrial School at the corner of Carey and Saratoga streets where girls are taught housework and household science.

People who have any doubt about the utility[8] of these

[8] The writer passed a winter vacation in Jamaica in 1899-1900, and there became fully persuaded, in his own mind, that, with good laws and labor, the Church and the School are among the very best means of uplifting the negro race in the West Indies as well as in the United States. See two articles by H. B. Adams in the Johns Hopkins News letter, circa May, 1900. Livingston's "Black

practical methods of fostering education and religion are reminded that servants trained by such methods are remarkable for their excellence and good manners and that, as a pious churchman said who founded a good school in mediæval England, "Manners maketh Man."

Mt. Calvary Clergy House at 816 N. Eutaw street is the head centre of very wholesome educational and social work in Baltimore and deserves better and wider appreciation.

PRESBYTERIAN CHURCHES.

The First Presbyterian Church of Baltimore early established reading-rooms and libraries in religious and educational institutes, some of which are now grown into useful churches. One of them, originally called "Hope Institute," has received the gift of a handsome stone building costing $40,000. It is now known as "The Reid Memorial." Four thousand dollars per annum are expended upon this social mission. Brown Memorial Church, itself a flourishing colony of the historic First Presbyterian Church, after receiving a free gift of a church building, has lately established a Sunday School building and earlier two mission churches, one called the Fulton Avenue Church[9] and the other the Park Church. All are more or less social and educational in character. The Park Church, on the corner of North and Madison avenues, contains not only an audience room for the Church and Sunday School, but also a very attractive reading-room, open every day and containing a library of good books, many current periodicals, a piano for musical entertainments in the evening, and last but not least, a collection of growing plants. Educational lectures, talks about

---

Jamaica" is a good book recording the experience of Jamaica and her various churches with the colored people, emancipated in 1833 and now numbering over 700,000.

[9] "Fulton Avenue" in its turn became an active social centre. A Baltimore home mission for resident Chinese has been maintained at this church, and Johns Hopkins students sometimes lecture there, as in many other Baltimore churches.

books, accounts of travel, with stereopticon views, are given from time to time in this reading-room or in the larger audience-room of the mother Church. A flourishing class of young people was organized a few winters ago at the Park Church for a cooperative study of American literature. Individual authors, like Longfellow and Whittier, were selected for home study and each member of the class read or recited some favorite selection. In such ways considerable interest in good reading was awakened in home circles.

In East Baltimore at Highlandtown the Rev. Wynn Jones, a Welsh Presbyterian, has long maintained a kind of Church Institute, with a fine reading-room and a great variety of educational work, a sewing school, a kindergarten, boys' brigade, etc.[10]

METHODIST CHURCH.

One of the best social educational experiments in Baltimore was tried by the Rev. Dr. John F. Goucher, President of the Baltimore Woman's College, in connection with the First Methodist Church, in the year 1887-88. This model church building contains not only a large and well ventilated audience room, but a model chapel for Sunday School work, evening lectures, and educational classes. There is also an attractive reading-room. At the time when University Extension was first talked of by Johns Hopkins men in Baltimore, President Goucher engaged one of the best graduate students in the Historical Department to give a course of instructive lectures on the History of the Nineteenth Century to the young people living in the vicinity of the Woman's College.

Charles McLean Andrews, now Professor of History in Bryn Mawr College, was the chosen lecturer and he conducted a very interesting and successful class course for a

[10] For the pioneer character of this Church Institute see the writer's monograph on "Public Educational Work in Baltimore," Johns Hopkins University Studies, Dec., 1899.

period of twelve weeks. The class used Mackenzie's History of the Nineteenth Century as a text-book. All were expected to read for a fortnight upon the same great subject, or group of topics, and then come together to be examined orally and to hear the class leader talk about the whole matter. To the more advanced and studious members of his class the instructor assigned special themes for individual study or writing at home. In each case he recommended good authorities for private reading. The class had its own historical library in the Church reading-room, which was well supplied with current periodicals. Good books were obtained by friendly cooperation and by contributions from the pastor's library and other private collections. The instructor occasionally brought interesting books and illustrations from the University. In these helpful ways the work went on easily and delightfully. Members of the class reported the results of original investigation to the whole company. Thus all profited by the labors of each. The good pastor and president was delighted with the results of this novel educational experiment and the whole church was edified and refreshed by the growing culture of its younger members.

The principles of this wholesome effort are very clear and are easily applied by any young people's society, in any church or intelligent neighborhood: First, organization for an educational purpose; second, efficient leadership; third, the choice of one great subject for continuous, progressive study along definite lines; fourth, a convenient reading-room with a working library and a cheery, attractive, educational environment for evening meetings; fifth, a spirit of hearty cooperation and self-help; sixth, a business element which places the enterprise upon a sound, sensible, and self-sustaining basis, like every good church and allied school or college.

For several seasons Dr. Goucher supported a lecture course by the aid of Johns Hopkins men for colored students at the "Centenary Biblical Institute," where lectures

were given on general history and on the history of labor. This missionary President of the Woman's College also encouraged a workingmen's course at Woodberry. Several young Methodist clergymen who by his advice took graduate work at the University, instituted at various times lecture courses in connection with their own congregations. One of the most interesting results of this church work was the enlisting of home talent. In one neighborhood a young clergyman managed to institute a series of cooperative lectures of the following character: A Talk on Architecture, with drawings, by an Architect; Planning a House, by a Builder; Building an Engine, illustrated by drawings, by a skilled Machinist; Choosing a Trade, by a Teacher in a Manual Training School; the Canning Industry of Baltimore, by a Representative of the Business; Banks and Money, by a Savings Bank Official; Principles of Business, by a Bookkeeper; a Talk on Earthquakes, by a Student of Geology; a Talk on Physics, by a Professor; an Evening with a Microscope, shown by a Johns Hopkins Biological Student. These talks were given weekly in workingmen's homes to small groups of from twenty to thirty people.

THE BAPTISTS.

The following brief notes regarding the social, affiliated and missionary work of the Baptist churches in Baltimore have been kindly contributed to this report by Dr. E. B. Mathews of the Johns Hopkins University:

I.—CHURCH SOCIAL WORK.

Mothers' Meetings are held to give religious instruction to the parents of poor children in the Sunday Schools; to give the most needy and promising raw materials out of which food and clothing may be made under supervision; to give talks and instruction regarding household management, sanitation, etc. These meetings are conducted in several of the churches.

Boys' Brigades are conducted as elsewhere. At least four of the Baptist churches in the city have them.

Young Men's Leagues are encouraged along the lines of the club and the debating society, with little or no religious instruction as such. There are two or three such leagues in Baltimore. Besides these there are several societies of different names that have for their object the training and mental [11] broadening of the less fortunate members of the churches.

II.—AFFILIATED CHURCH WORK.

Children's Sunday Crèche. In one of the churches arrangements are made by which the children are cared for in the immediate vicinity, while the parents attend the services of the church.

Orphanages have been maintained for some years for both white and black children.

III.—CITY MISSIONS.

A Model Lodging House receives poor transients at a low tariff. There is some religious instruction given and occasionally there is an entertainment furnished by the young people of one of the churches.

Italian Mission. Through the work of the young people of several of the churches and other cooperation there is a mission carried on among the Italians of the city. Up to the present time most of the work has been religious but, in the Fall, a manual training school will probably be opened for the Italian boys and probably also a sewing school for the girls.

IV.—OTHER WORK.

Besides these various lines of activity, more or less closely associated with the churches, there are several enterprises supported by Baptists and conducted by them, *c. g.*:

The Sewing Schools, several of which are carried on with

[11] The educational activities of Baltimore Baptists should be noted in connection with the work of Mr. Eugene Levering, who founded Levering Hall at the Johns Hopkins University and sustains lectures there. Note also Baptist educational work in Washington, Chicago and Providence.—EDITOR.

great success, especially among the Germans. Many people are active in this movement and many sessions are held in different parts of the city.

Meeting of Immigrants. It is the custom for some of the German Baptists (supported, I believe, by others) to meet all of the incoming steamers, or their passengers, and assist them in getting to their points of destination. Each immigrant is supplied with advice, a Testament and a map. On the last are printed the names of Baptist clergymen, one for each of the larger centers, especially of the central and western parts of the United States, whither most of the immigrants are bound. The aim is to furnish the name of some one to whom the strangers may turn as to a friend.

FIRST INDEPENDENT CHRIST'S CHURCH (UNITARIAN).[12]

This historic church was founded in 1819 by New England people and their associates in Baltimore. The first pastor was the Rev. Jared Sparks, one of the pioneers in the investigation of American history and in the publication of original sources of historical knowledge of this country. The famous Dr. William E. Channing preached the ordination sermon when Jared Sparks was installed in the first Unitarian Church in Baltimore, on the corner of Charles and Franklin streets. That church from the beginning has been a real educational centre, the source of intellectual light and leading for a wide area of progressive Christianity. At one time it was a frontier church in the southern movement of American Unitarianism, which proceeded originally from Pennsylvania and New England. An account of the Baltimore beginnings of Unitarianism and of its educational

[12] More detailed accounts of the early social and religious activities of this society may be found in the "Church Register," privately printed at the press of Guggenheimer and Weil, 1889. Worthy of special note are the Christian Union Educational Classes, the Loyal League, the Woman's Aid Society, the Industrial School, the Household School, the Post Office Mission (for distributing Unitarian literature) and the Flower Committee, and the various parish libraries.

extension to Washington and further South will be found in Chapters VI and VII, Vol. I of H. B. Adams' "Life and Writings of Jared Sparks."

A new educational phase of this church began in the pastorate of Rev. Charles R. Weld, who represents the advance of the institutional church in Baltimore. His personal work was intimately associated with the Guild, which began its life February 3, 1888. "The origin of this institution was an essay in practical Christianity by a gentleman identified with the congregation of the First Independent Christ's Church. At first a simple room, provided with a few tables on which were games and illustrated books, was opened in East Baltimore in the hope that the waifs of the street, attracted by the light and warmth within, encouraged by a kindly welcome, and inveigled by the games and pictures, might be brought, if only for a brief time, under better influences than were afforded by the variety theatres and saloons of the neighborhood. The originator of this benevolent scheme had the satisfaction of seeing the work so begun grow under his care; and when it reached a stage beyond which there seemed to be no further development, he had the wisdom to seek for it new auspices.

"Accordingly, in January, 1888, the congregation of the First Independent Christ's Church met at the call of their minister, agreed to carry on and extend this laudable work, organized it anew, and leased for its uses a commodious building on East Baltimore street, thus putting it upon a permanent basis with an outlook for the future. That the burden of supporting the new Guild might be equitably distributed, certificates of shares were issued, the payment on each share being twenty-five cents monthly. Some took one share, others took more; and by this plan of small sums coming in at regular and frequent intervals from a large number of contributors, the revenue of the Guild is easily raised, no one is heavily taxed, and many people are personally interested in the success of the enterprise, so that volunteer aid can always be had when the need of it is made known.

"It may here be said, that this Guild, while it is under the direction of the First Independent Christ's Church, is not wholly supported by that body; a number of persons outside of its membership assist in carrying on this particular work, some because of its general merits, others for reasons of public policy, being of the opinion that the welfare of the community is promoted by an institution which aims to develop into useful men and women, a class of children who are exposed at a tender age to some of the lowest and most destructive forms of temptation."

In 1889 more suitable and commodious rooms were fitted up for the Guild work in the basement of the Unitarian Church, corner of Charles and Franklin streets. These rooms were kept open four evenings in the week and classes were maintained for boys in drawing, charcoal shading, clay modeling, and brass work. Admission to these classes was by ticket, for which pupils paid five cents monthly. One evening the reading-room was thrown open to all comers. There were also gymnasium classes, illustrated lectures, readings, and social entertainments. The girls had classes in sewing, drawing, and singing. Usually one of the ladies in attendance read aloud while the sewing was in progress. Trained teachers were employed in connection with volunteer teachers from the congregation. Large numbers of Baltimore boys and girls were thus instructed. During one year there was a total attendance of all kinds of guild work of over 7,000 pupils and hearers.

This beginning of institutional church work led to a great variety of subsequent developments, but the most interesting and popular of all were the educational lectures on music for the people by Mr. T. W. Surette. His familiar talks were illustrated by the performance of good music by his assistants and attracted vast audiences to the old Unitarian church building, the interior of which in recent years has been reconstructed, artistically decorated and made attractive to the people. All churches now recognize the importance of good music in their Sunday services, but the

extension of good music under church auspices on other evenings in the week is now a manifest educational opportunity which many churches are beginning to improve.

FRIENDS ("HICKSITES").

In the Rules of Discipline and Advices of Baltimore Yearly Meeting of Friends, who used to gather on Lombard street, but now at the upper end of Park avenue, there is one searching "query," directed to the subordinate or local meetings and intended to impress upon them the importance of education and self-examination: "Are Friends careful, as far as practicable, to place their children for tuition under the charge of suitable teachers in membership with us?"

From this twelfth and old-time "query" it is said that all the educational efforts and institutions of the "Hicksites" have sprung, from "First Day Schools" to Swarthmore College. The Hicksite branch of the Baltimore Society of Friends has the following varied and useful activities of an educational or social nature:

(1) The Friend's Library, an admirably arranged and most attractive collection of readable books in the social rooms of the Friends Meeting House on Park avenue. This Library, started in 1799, is one of the best examples in Baltimore of what an Institutional Church Library ought to be.

(2) The Mission Sewing School held on Saturdays during the winter months in the Meeting House.

(3) Friends Benevolent Society, held on Fridays.

(4) Two Mission Schools, held Sundays at the Old Town Meeting House, Aisquith street.

(5) Hollywood Children's Summer Home open during the summer months at Catonsville, near Baltimore. Though not under the immediate care of the Meeting, it originated with and is supported largely by the Members, thirty of whom are on the Board of Managers.

(6) Free Kindergarten open during the regular school year at the McKim Building.

(7) Young Friends Association, meeting monthly on 2nd Friday evenings, during the winter months in the parlors at the Meeting House.

(8) The Park Avenue Literary Club, which meets monthly in the winter season at the Meeting House. This Club has been in existence for several years and has done an extraordinary amount of good educational work by means of lectures, classes, and regular literary or historical exercises.

(9) The "Indian Committee" for work among the American Indians.

(10) Traveling libraries sent from one country meeting to another.

(11) Under the care of the Philanthropic Committee of the Park Ave. Friends is the following list of educational, or benevolent enterprises, each in charge of a special committee which reports once a month to the Meeting at large: A Mothers' Meeting, held weekly, in winter, with an address each week, on Nursing, Sanitary Science, Domestic Economy, Ethics; a department on temperance instruction, by means of lectures and literature; a department of peace and arbitration, by lecture, etc.; a department of purity, by distribution of literature and lectures, etc.; a department of tobacco reform; a department assisting in the education of colored people in Maryland, Virginia, Pennsylvania, and South Carolina; a department of prison reform, including representatives on Police Matron Board; a department to suppress immoral books; a department directed against gambling and lotteries; a department directed against cruelty to animals; a department devoted to improving the tone of the press throughout the United States.

(12) A day school, co-educational, conducted on Friendly principles.

(13) A Sabbath School with library of 3,300 volumes.

Among the best educational experiments attempted in Baltimore were those of the Park Avenue Literary Club, an organization connected with the Hicksite Society of Friends,

which has one of the most attractive church library environments in this city. The plan of study has included with history the subjects of art and literature. Special attention has been devoted to great artists, musicians, and men of letters. A detailed study has been made of some of the great municipal centres of European culture. From time to time lecturers have been secured upon such subjects as "Venice," "Wordsworth and the Lake Country," "Ideal Commonwealths," "The Brook Farm Community," "Events which led to the Discovery of America," "The Hawaiian Islands." Some of the lectures were illustrated by stereopticon views, and were usually given in the Friends' Meeting House, corner Park avenue and Laurens street.

The Club early succeeded in developing great interest in American literature, which was studied historically in the winter 1893-94 according to the University Extension syllabus prepared in printed form by Professor Robert Ellis Thompson. A special lecture on "Nathaniel Hawthorne and the Idealistic Romance" was given to the Club May 23, 1894, by Felix E. Schelling, of the University of Pennsylvania, whose printed syllabus on Modern Novelists included, besides Hawthorne, the following special themes: (1) The Evolution of the Novel; (2) Sir Walter Scott and the Historical Romance; (3) Charles Dickens and the Novel with a Purpose; (4) William Makepeace Thackeray, and Social Satire; (5) George Eliot, and the True and False Realism. Concentration of club interest upon special themes for a period of several weeks always gives greater impetus to real educational work than does the old-fashioned system of single lectures upon heterogeneous and merely entertaining themes.

The Park Avenue Literary Club announced in 1894 a course of ten lectures on "The Age of Elizabeth" by W. Hudson Shaw, M. A., Fellow of Baliol College, Oxford. The course included the following special themes: (1) The Last of the Tudors; (2) Mary, Queen of Scots; (3) The Conflict of England and Spain; (4) the Reformation in England;

(5) Ireland under Elizabeth; (6) Sir Philip Sidney; (7) the Earl of Essex; (8) Sir Walter Raleigh; (9) the Elizabethan Seamen; (10) the England of Elizabeth and Shakespeare.

Hudson Shaw has been for several years one of the most distinguished and successful of the Oxford University Extension Staff. He came to Baltimore under the auspices of the American Society for the Extension of University Teaching, a society connected with the University of Pennsylvania. The lectures were given at the Friends' Meeting House, on Saturday evenings at 8 o'clock. The charge for the entire course was $2; for a single admission, fifty cents. The lectures were open to the public and attracted large and enthusiastic audiences. Mr. Shaw read his lectures from manuscript and presented in a spirited and instructive way some of the best results of modern critical scholarship upon his chosen themes.

After every lecture a series of interesting historical portraits and of architectural views was shown by means of a stereopticon. The pictures were not so numerous as to weary the audience and invariably served to illustrate the lecture. Mr. Shaw always managed to introduce a great deal of fresh information while commenting upon his lantern views. After this instructive pictorial exhibition there was a brief conference between the lecturer and his class who were encouraged to ask questions.

The pedagogical features of so-called University Extension work make it much superior to the old-fashioned lyceum system. These new features may be briefly summarized as follows: (1) A series of lectures upon some great subject or upon closely related themes; (2) the printed syllabus which contains an outline of the whole course; (3) written answers to questions proposed in the syllabus and thought out at home; (4) a class conference before or after every lecture, for familiar discussion of the difficult questions and for general encouragement; (5) a final written examination for those who may choose to take it. The theory is that in every University Extension audience, which is as

miscellaneous as a church congregation, there will always be a saving remnant of studious people who will gladly do some intelligent work at home.

THE FRIENDS CIRCLE

Was first established in 1885. Meetings were held bi-weekly during the winter in the Park Avenue Library, at which time all the members of the Meeting were welcomed, from small children to aged grandparents. Each felt that he had a place and a part. The work covered a wide field, the aim being to have something to interest every one present. In 1898 the "Friends Circle" gave place to the Young Friends' Association, an organization of the younger members, meeting with the object of learning more of the history and needs of the Society and for the discussion of current topics, or leading questions of the day. The subject for one evening, recently, was "Progress of science in the 19th century." The program of the Young Friends' Association for 1898-99 was: 1. History of the Church before the time of Fox. 2. Puritan Revolution. 3. History of the Predecessors of the Society of Friends. 4. History of Friends during Geo. Fox's life. 5. Life of William Penn. 6. Society of Friends from the End of Persecution to the Death of Hicks. 7. In what Respects should Friends be a peculiar People? 8. What can Friends, especially the younger Members, do to vitalize the Society? 9. How should We spend our Sabbath? 10. Why do so few Young Friends attend our business Meeting? 11. Is Christian Science consistent with the Views of Friends? 12. National Expansion. 13. Czar of Russia as a Peacemaker, by J. H. Turner, of J. H. U. 14. War Taxation, by T. S. Adams, of Johns Hopkins University. 15. American Relations with Spain on the Cuban Question, by Dr. J. H. Latané, of J. H. U. 16. Progress of Good Government in Baltimore.

ORTHODOX FRIENDS.

This society has everywhere and always been devoted to the cause of education and social improvement.[18] The Friends have founded not only religious meetings, but schools and colleges in all parts of this country. The work of the Baltimore Association in reviving agriculture, industry and local education at the South after the desolation wrought by our late civil war is one of the noblest evidences of their useful, educational, and social activity. The record of this good work in which the late Francis T. King, one of the original trustees of the Johns Hopkins University, was a prominent leader, is given in the "Annual Reports of the Baltimore Association of Friends to advise and assist Friends of the Southern States," a series of publications which began in 1866 and 1867. The story is told in sufficient detail by Dr. Stephen B. Weeks in his valuable work on "Southern Quakers and Slavery," pp. 308-321, where the life and educational services of Mr. King are briefly narrated. Dr. Weeks says: "The greatest efforts of Baltimore Friends were put on the development of primary schools. In 1865 Friends in North Carolina had no schools, no school houses and no books. Mr. King attended the Yearly Meeting in 1865 and told the Friends to start such schools as they could with the materials at hand, and that a superintendent would be sent them as soon as the proper man could be found." For this missionary work Professor Joseph Moore, of Earlham College, Indiana, was duly chosen. After three years of service in the field he was succeeded by Allen Jay, also of Indiana, who carried on the work for eight years longer.

[18] The beginnings of Quaker higher education in this country are suggested in the Centennial History of Westtown Boarding School (1799-1889) by Watson W. and Sarah B. Dewees, a charmingly illustrated little book, recently published in Philadelphia, 1899. William Penn early encouraged the starting of the "Friends' Public School" which gave rise to the present well-known Penn Charter School. Haverford School and College were foreshadowed in the Minutes of a Friends' Committee Meeting in 1807 (Dewees, 59-60).

The Baltimore Friends have also given a great impetus to the education of freedmen at the South and have done much in that region for the promotion of material as well as spiritual welfare. A model farm developed by Friends in Guilford County, North Carolina, was called "Swarthmore Farm." In 1872 the Baltimore Association placed its southern social and educational work, then mainly self-supporting, under the executive care of the Yearly Meeting. The schools then numbered 38, with 62 teachers, and 2,358 pupils. The work is still carried on by Friends in the South and is a remarkable example of the promotion of self-help in connection with education and religion.

In Baltimore the educational activities of the Friends Meeting may be briefly enumerated under the following heads: (1) A Mission House near Federal Hill, where helpful social work is supported in connection with a religious society and its social allies; (2) lectures to young people are given at this mission station and also at the Friends Meeting House, where very interesting and suggestive talks on historical, literary and social subjects are often heard; (3) a gymnasium for boys; (4) a Kindergarten; (5) boys' and girls' clubs; (6) classes in cooking, dressmaking, bookkeeping, and literature. At one time, near the Friends Meeting House on Eutaw street, they maintained a good academy or institute, but it was finally discontinued. The building is now used as a social rendezvous for Friends attending the Yearly Meeting.

The foundation of the Johns Hopkins University by a Baltimorean of Quaker stock and the conspicuously useful part taken on its Board of Trustees by members of that society in whom Johns Hopkins had confidence, viz.: Mr. Francis T. King, Dr. James Carey Thomas, and Galloway Cheston, are striking indications of the influence of Friends upon the intellectual development of Baltimore and indirectly upon university education in the United States. Mr. Francis T. King, more than any other one man shaped the original plans and building policy of the Johns Hopkins

Hospital to which he as President of the Board of Trustees gave personal attention and constant devotion for many years. In this connection should be mentioned the "Wilson Sanitarium," a beautiful suburban home founded by a Friend for women and children needing institutional aid and comfort. Also noteworthy is the establishment of "Bryn Mawr College," near Philadelphia by a good Quaker, who gave the institution his wealth but not his name. The second President of this noble college for women is the daughter of one of the original Quaker trustees of Johns Hopkins University. "Bryn Mawr School," founded by Miss Garrett, in Baltimore, was suggested by the Quaker foundation near Philadelphia.

SOCIAL SETTLEMENTS IN BALTIMORE.

(Lawrence Memorial Association.)

In 1892, the Rev. E. A. Lawrence, then pastor of the First Congregational Church,[14] established in Parkin street, by the aid of the Christian Endeavor Society of his congregation, the first social settlement in Baltimore. He was the first practical worker to take up residence among the people in the tenement house district of this city. He took with him as a co-laborer Mr. Frank D. Thomson, a graduate of Knox College who was at that time a student of history and economics at the Johns Hopkins University. Together they rented rooms in a small flat in the Winans' tenements. Near by they obtained the use of class rooms on a ground floor and there gathered, on certain nights of the week, the boys and girls of the neighborhood for instruction and so-

[14] An historical Sketch of the First Congregational Church of Baltimore was prepared at request of the church by the late Henry Stockbridge and was published in June, 1891. This sketch gives the historical background, origin, and development of the society, and an account of its various pastors down to the time of Rev. Edward A. Lawrence. There is a supplemental note by Daniel M. Henderson describing the educational work of Mr. Stockbridge himself in connection with the adult Bible class, which gave considerable attention to early church history. A Life of Mr. Lawrence has been lately written by his mother, Margaret Woods Lawrence.

cial entertainment. Young people from Mr. Lawrence's church took turns in conducting class exercises in the Parkin street rooms and largely contributed to the practical success of the experiment.

Since Mr. Lawrence's death in 1893, the Parkin street experiment has been continued by his friends. For some time Mr. Thomson remained in residence. He and other coworkers kept up the boys' club and other educational work. During recent years it has been greatly developed. Four entire floors, or flats, were at one time rented at 214 South Parkin Street, where Mr. Lawrence lived. On the ground floor are four rooms devoted to various classes. On the second floor are reading and club rooms. Lodgings are furnished on the third floor to university men who take up residence in the Winans' tenements and help to maintain the social mission already established. The fourth floor is occupied by the care-takers of the premises. Besides girls' and boys' clubs and a free reading room, there are girls' classes for sewing and knitting, and also a kindergarten.

This work was carried on by young people and with contributions from the First Congregational Church, the Associate Reformed Church, the Church of the Disciples, and Brown Memorial Church, aided by students from the Johns Hopkins University and by young ladies from the Woman's College of Baltimore. Experience has shown that cooperation is possible between different churches and educational institutions in this Parkin street settlement. There is perhaps more hope of permanence and continuity of such social experiments when college and university settlements are supported by churches and by regular patrons who can provide the necessary means for the prosecution of the undertaking. There is sometimes a great waste of energy and capital in these social missions. Efforts are too scattered; money is lavished upon an expensive plant; and the good accomplished is not always commensurate with the actual outlay of wealth and strength. In Parkin Street the workers, instead of renting a costly club house, have taken inex-

pensive tenements in the very building or block occupied by the families for whose benefit the experiment is tried. The whole cost of the undertaking is only a few hundred dollars per annum. Upon simple grounds of economy such modest social missions are deserving of friendly consideration by our city churches. It would not be too much for well-established religious societies to maintain, singly or by cooperation, some such social experiment-station in an industrial neighborhood. Every great town should be filled with these social light-houses, which are truly radiating centres of educational, moral and religious influence. It is important to have a local habitation, an active secretary and resident workers, who will rally others about them.[15]

One Saturday afternoon in November, 1893, the week before his death, I met Mr. Lawrence at the rooms of the Charity Organization Society in Baltimore where we had a talk about the Parkin street settlement. We walked up Charles street together, continuing conversation upon this subject, and he expressed perfect confidence that the people of his society, even if he should leave Baltimore, would continue to maintain the work which had been so well begun. I asked his advice about the best method of organizing a similar social settlement at Canton in Southeast Baltimore. Mr. Lawrence said that it would be very easy to get money by subscription for the support of such a work and that the

[15] A recent report of the Lawrence House by Mr. H. B. Foster, a student at Johns Hopkins University, states that six rooms are now occupied in this social settlement. Three rooms are on the lower floor and are used by sewing classes. The front room is used for a class of small girls, who constitute about one-half of the whole number in attendance. The second floor of the Lawrence House is used for embroidery classes, and the third floor for classes in cooking and sewing. The work is carried on usually in the evening from 8 to 9 o'clock. At 9, for about a quarter of an hour, all the children gather in the front room downstairs to practice singing. About 65 children have been registered. The average attendance is about 40. One teacher has been found sufficient for each room, with the exception of the front room on the ground floor, which requires three teachers. Wednesday evening is usually given up to amusement, but Thursday is devoted to serious work.

Rev. T. M. Beadenkopf, a graduate of the Johns Hopkins University, would be just the man for students to work with in that neighborhood. Mr. Beadenkopf had spoken to me, on the occasion of a recent lecture at the People's Institute at Highlandtown, about the desirability of another social experiment station, corresponding to that established by Mr. Lawrence. Mr. Beadenkopf has a small Congregational Church at Canton among the Welsh and Scotch, and he had expressed a willingness to take a small tenement in the neighborhood and reside there for the encouragement of local educational work in the form of boys' clubs, evening classes, a reading-room, etc. This project, together with the extension of the Parkin street work, was the last subject discussed with me by Mr. Lawrence. We parted at the door of the Johns Hopkins University. He was taken ill that night and died within a week, November 10, 1893. He was only 46 years of age.

It is a singular fact that two clergymen in this city who at the same time were practically applying Christianity to the actual needs of society in matters of popular education and organized charity, should have been removed in the very flower of their strength from the scene of their labors. But the premature death of Rev. Wayland D. Ball, pastor of the Associate Reformed Church, and of the Congregationalist, Rev. E. A. Lawrence, like the death of Arnold Toynbee and Edward Denison, has proved the resurrection and the life of their cause. Their work has been taken up by others and will be carried on to its fulfillment, perhaps in larger ways than the pioneers ever hoped. Their two churches have recently been united and are together now known as the "Associate Congregational Church of Baltimore."

It is sometimes comforting to think of the dead as living on in connection with the good deeds they did on earth, the books they wrote, the institutions they served and their successors in the same spirit. We can discover something of the spirit of Mr. Lawrence in his posthumous but still timely

work on "Modern Missions in the East" published by Harper and Brothers, 1895. In the introduction to this interesting work describing Mr. Lawrence's missionary tour of observation around the world, Dr. Edward T. Eaton, President of Beloit College, records these historical and living facts: "On the walls of the church from which he was called to the higher ministries of heaven has been placed a beautiful tablet bearing the inscription:

EDWARD A. LAWRENCE, D. D.
Served his Master with all Zeal and Faithfulness
In this Place and in the Streets and Lanes of the City
From June 9th, 1889, till November 10th, 1893,
When God took him.

"But a still more beautiful and significant tribute is taking shape in the Lawrence Memorial Association, formed to continue and enlarge the work which Dr. Lawrence inaugurated among the tenements on Parkins street, in Baltimore. Here, in no merely figurative sense, will his voice still be heard; here will his consecrated purpose for the uplifting of humanity be felt more and more strongly as the days and years go on. Surely to him is accorded the blessing of those whose works do follow them." The Lawrence tablet has been removed to the larger Associate Congregational Church, of which the Rev. Oliver Huckel is now pastor.

The work of the Locust Point Social Settlement Association (1240 Hull Street, Baltimore) was inaugurated April 2, 1896, through the earnest efforts of Mrs. J. S. Dinwoodie, who made Locust Point her home, and through neighborly kindness, friendly visiting, and the organization of clubs and classes, established cordial relations with those about her. Since that time the scope of the work has extended, and it now includes classes in arithmetic, drawing, sewing, dressmaking, weaving, and clubs for children of all ages. The Settlement library is open twice a week.

From its start the Settlement has been the home of one or more residents, whose entire time has been devoted to the work. They have endeavored to show those about them

what a true home should be, and to establish a social centre for those who so gladly embrace the opportunity for social intercourse on a higher plane. The work is supported by voluntary contribution, and is conducted by a Board of Managers.

In a report of the Canton Night School and Reading Rooms for 1899-1900 we have a further illustration of activity proceeding from the Congregational Church in Baltimore. The school was first opened in March, 1899, for the benefit of many boys and young men in Canton, who were obliged to give up study at an early age and go to work. The night school was first opened in the Canton school building and was afterwards moved to rooms built for this Baltimore continuation school by the late J. Henry Stickney, in the rear of Canton Congregational Church, of which Thomas M. Beadenkopf, a friend and co-worker of the late Dr. Edward A. Lawrence, is the present pastor. The reading-room is open several nights a week.

The Woman's Association of the First Congregational Church of Baltimore published a programme for the season of 1898-99, showing the very interesting and somewhat varied lines of activity which then existed. The work was divided into the following departments: (1) Home Missions; (2) Foreign Missions; (3) City Work; (4) Literary and Musical Department. The president was Mrs. Edward H. Griffin. Each department had its own chairman and each session was accompanied by a ladies' tea. In addition to the usual study of missions at home and abroad, systematic inquiries were made into different phases of philanthropic work in Baltimore City. Some sessions were devoted to literature and music. A Class in Foreign Travel was conducted fortnightly by Miss Searle, a teacher in one of the private schools of this city. Members of the class prepared papers with regard to historic places and noted men. For example, one session was devoted to illustrations of the life and work of Fra Angelico; another to Dante. This class met at private houses and was made socially at-

tractive. This account is here published for its suggestive value. In churches and institutions, indeed in all things truly historic, there is a soul that never dies.

THE ASSOCIATE CONGREGATIONAL CHURCH.[16]

The original Associate Reformed Church was long situated in a down-town quarter on West Fayette Street, now a busy thoroughfare. There in basement-rooms, in addition to a regular Sunday School, were maintained a social mission, a boys' club and a sewing school for girls. All of these popular agencies were recruited by the children of the poor, some living in the vicinity and some at long distances away. The boys' club was begun in 1888 under the efficient direction of the late George Gebhardt, at one time an historical student at the Johns Hopkins University. Room was provided for the boys in the chapel, where books and papers were accessible on club nights. Under the auspices of this club a series of popular lectures was given. I had the honor of opening the course with a talk on the University Extension Movement, and was followed by my colleague, Dr. J. M. Vincent, on Labor in the Middle Ages, by T. K. Iyenaga, on the Japanese People, and by other lecturers.

In the autumn of 1890 the congregation of the Associate Reformed Church removed to their new and spacious building on the corner of Maryland Avenue and Preston Street. This church edifice is most convenient for social and educational as well as religious work. In close connection with the chapel and main auditorium, there are various rooms suited for church societies, boys' and girls' clubs, reading circles, etc. Among other social institutions, a Young Ladies' Literary and Musical Society was conducted by Mrs. J. M. Vincent. The history of Italian cities, with illustra-

[16] The history of this composite church, in which the Congregational has now been merged, has been written and published by Rev. Oliver Huckel—"The Faith of the Fathers and the Faith of the Future," The Arundel Press, Baltimore.

tions of Italian art, formed the general subject of study for one entire season. Several evenings were devoted to the history and architecture of each of the great centres of Italian culture, Rome, Florence, and Venice. Each evening musical entertainment was provided by skilled members of the society. Hon. Henry Stockbridge, Jr., and Dr. J. M. Vincent, of the Johns Hopkins University, were especially active and efficient in promoting the educational and social work of the Associate Reformed Church. At one time the Rev. Hiram Vrooman was connected with Mr. Ball's church as an assistant. Under his direction the Young Men's Guild was reorganized as the Associate Reformed Club. The number of magazines and papers in the reading-room was increased and the room was kept open for several hours every evening. A gymnasium was constructed in the basement of the church for the use of the various clubs at different hours. For the benefit of newsboys and street waifs a so-called Working Boys' Club was instituted which combined recreation with positive instruction. A little newspaper called "The Experiment," was published, in order to describe the different social activities of the church and announce the various appointments.

From time to time lectures were given to the Young Men's Club and to popular audiences in the chapel on week day evenings. Dr. George Kriehn, of the Johns Hopkins University, gave a series of four-class lectures on Workingmen during the Middle Ages. A syllabus was printed giving an outline of each of the following four lectures: (1) The English People from their Origin to the 14th Century; (2) English Popular Uprisings in the 15th and 16th Centuries; (3) Outbreak of the French Peasantry, or the so-called Jacquerie; (4) German Peasant Wars and the Social Side of the Reformation. These lectures, however, failed to reach the working classes. In fact all academic or "University Extension Lectures" in Baltimore and vicinity have proved somewhat disappointing in this regard. Popular lectures by clergymen, as experience proves, are much more likely to be successful with great masses of people.

The pastor of the Associate Reformed Church, the Rev. W. D. Ball, was himself singularly gifted with the power to attract and hold large audiences, composed of "all sorts and conditions of men." He was a gifted man and scholar, with a deeply religious nature, and knew how to apply his acquired knowledge and his personal religion in practical, helpful, social ways. He felt it his duty to enlighten the minds of his congregation by concrete presentations of historical truth. For several years he was accustomed to give a series of Sunday night lectures upon religious biography. His own winning personality and the wonderful vitality and humanity of his discourses attracted large audiences of young men. Clerks and collegians were alike interested and edified by those eloquent and instructive sermons, which required more than common culture and study on the part of the preacher.

Mr. Ball's first course in the winter of 1888 was upon Notable Religious Personages of the Sixteenth Century. The following individual characters were discussed: Martin Luther, the Reformer; Desiderius Erasmus, the Religious Satirist; Ulrich Zwingli, the Swiss Reformer and Patriot; Pope Leo X., Son of Lorenzo, the Magnificent; Ignatius Loyola, the Jesuit; Miguel Servetus, the Liberal; Caspard De Coligny, the Huguenot; John Calvin, the Theologian; and John Knox, the Scotch Reformer. A second course was given in the fall of 1888 on Religious Teachers and Philosophers of the Past: Confucius, the Chinaman; Buddha, the Indian; Zoroaster, the Persian; Moses, the Jew; Socrates, the Greek; Jesus, the Nazarene; Marcus Aurelius, the Roman; Mohammed, the Arabian.

These Sunday night lectures were so well received that Mr. Ball was encouraged to give a third course in the winter of 1889, on The Fathers of the Faith, or a Study of the History and Development of Christian Institutions and Doctrines in connection with their Founders. The series embraced the following great lights in the history of the early Christian Church: Ignatius (30-107 A. D.); Justin Martyr

(110-165 A. D.); Irenaeus (120-202 A. D.); Clement of Alexandria (153-217 A. D.); Tertullian (145-220 A. D.); Origen (185-254 A. D); Cyprian (200-258 A. D.); Athanasius (296-373 A. D.); Ambrose (340-395 A. D.); Chrysostom (347-407 A. D.); Jerome (346-420 A. D.); Augustine (354-430 A. D.); Leo the Great (390-461 A. D.).

Mr. Ball was so impressed with the educational and religious significance of these Fathers of the Christian Faith that he afterward, February 10, 1890, read a paper before the Baltimore Presbyterian Ministers' Meeting on "The Value of a Study of the Patristic Writings." Upon the title-page of his printed paper appears the following significant extract from Pressensé's work on the Early Years of Christianity: "There can be no doubt of the ignorance which extensively prevails, even among the highly cultivated, as to the nature and origin of Christianity. This is the newest of themes, because that which has fallen into deepest oblivion. We are persuaded that the best method of defense against the shallow skepticism which assails us, and which dismisses with a scornful smile, documents, the titles of which it has never examined, is to retrace the history of primitive Christianity, employing all the materials accumulated by the Christian science of to-day; for it must be well understood that there is in truth such a thing as Christian science in the nineteenth century."

In the text of Mr. Ball's little pamphlet (printed by John S. Bridges & Co., 15 South Charles St., Baltimore), he says, p. 8: "In acquainting myself with Patristic literature, I found that I was introduced to the very sources—the New Testament excepted—to which all writers upon the subject of Christian institutions are at last restricted for their historic data. I was, with their volumes opened before me, enabled, not merely to read criticisms upon, but actually to trace, growing at first side by side, the episcopal and congregational ideas of Church government, resulting early in the dominance of the episcopacy."

After the above course on the Fathers of the Faith, Mr.

Ball gave a series of Sunday night lectures on the Reformers of the Nineteenth Century. He considered such representative men as Frederick Denison Maurice, Charles Kingsley, Thomas Carlyle, John H. Newman, and others. While continuing to the last such educational and religious lectures in his own Church, Mr. Ball, in 1892, made arrangements for a "People's Course of Popular Lectures," to be given at monthly intervals, on week day evenings, in the Concert Hall of the Academy of Music. Among the eminent lecturers in this People's Course were Dr. F. W. Gunsaulus, on "Savonarola," and Dr. Charles H. Parkhurst, of New York, on the "Problems of Great Cities." In January, 1893, only four months before his death, Mr. Ball secured for a Sunday evening course of lectures on the Bible, four eminent New York clergymen: Rev. M. R. Vincent, on "New Testament Criticisms"; Rev. Edward L. Clark, on "The Bible and the People"; Rev. J. H. McIlvaine, on "The Citadel of the Bible"; and Rev. Charles A. Briggs, on "The Bible and the Church." Young men and students were especially invited to attend these lectures. The Associate Reformed Church was crowded and the people of Baltimore thus received valuable instructions from some of the leading exponents of the New Theology and of the Newest Learning about the Bible. The result was the removal of much unreasonable prejudice among people who had never heard of these things from acknowledged authorities, but only through unjust and more or less garbled reports.

America is probably one of the most backward countries in the Protestant world as regards intelligent historical and literary study of the Bible. The positive ignorance of American citizens and college graduates on this subject is amazing. One of my Hopkins students who was graduated from a Christian college, said one day in a class in Jewish History that he had always supposed the word "Lord" in the Pentateuch referred to the Messiah, *e. g.*: "The Lord spake unto Moses and Aaron, saying unto them" (Leviticus xi: 1). Evidently this young man had forgotten, or never

learned the difference between the Old and New Testaments. Many equally absurd blunders might be cited by every pastor and teacher. A well-known public man in Baltimore was called upon not long since to give an address on the occasion of the rededication of a Methodist Episcopal Church belonging to our colored brethren and called the "Church of Ebenezer." The orator said that personally he had always had the greatest reverence for that old Hebrew patriarch Ebenezer! I have told this story to many college[17] and university men, but the best of it is that they usually fail to see the point, but, like our Baltimore orator, retain all respect for the patriarchs. (For convenience, see I Samuel vii: 12.)

Richard A. Armstrong, of Nottingham, England, in his translation from the Dutch of "The Religion of Israel," by Dr. Knappert, a Dutch pastor of Leyden, Holland, says: "It appears to me to be profoundly important that the youthful mind should be faithfully and accurately informed of the results of modern research into the early development of the Israelitish religion. Deplorable and irreparable mischief will be done to the generation now passing into manhood and womanhood, if their educators leave them ignorant or loosely informed on these topics."

The attitude of Dr. Knappert and Dr. Oort (also a Dutch pastor and teacher in the city of Leyden), as regards the duty of the clergy in this matter of higher Biblical education, is especially worthy of consideration by Congregational ministers who remember that the Pilgrim Fathers first found in Holland enlightened toleration of their own independent opinions and that their Leyden pastor, John Robinson, in his farewell sermon to those who sailed for America said: "I am confident that the Lord hath more light and truth yet to break forth out of his holy word."

---

[17] Amusing examples of the hazy ideas of college students, young men and women, on Biblical matters may be found in President Charles F. Thwing's educational article in *The Century Magazine* for May, 1900, on "Significant Ignorance about the Bible as shown among College Students of both sexes."

In my own college town, Amherst, Massachusetts, higher Biblical education was openly proclaimed years ago from a Congregational pulpit by a cultivated village pastor, Dr. Goodspeed. He preached the historic truth as it was in Moses and the prophets as well as in Christ and the apostles. That village pastor explained to his flock in gentle ways and with sweet reasonableness, the true historic significance of some of the most troublesome portions of the Hebrew books. New light and truth began to break forth from the word of God in that somewhat conservative village community. One good mother in Israel said to the pastor: "You have saved for me the Old Testament." She meant that his enlightened preaching and historical-literary methods of exposition had cleared away the difficulties that all good women and some men must feel regarding the Hebrew Patriarchs and those old wars of the Lord recorded in the books of Judges, Samuel, Kings, and Chronicles. If the truth could be known, many good Christian mothers confine their readings in the Old Testament chiefly to the Psalms, Job, and the Prophets! The worn or unworn appearance of the leaves in many a family Bible will reveal curious facts for the present and future generations.

Is it not worth while to rescue the whole historic Bible for young and old? This can be done by intelligent and sympathetic preaching, by scholarly teaching, by "speaking the truth in love," by letting people know that there really are in the Bible such beautiful things as poetry and allegories, such useful and commonplace things as genealogy and history, besides such universal truths as the moral law; and that some features of the Old Testament are necessarily permanent, some evidently transitory, literary,[18] all true in spirit, some occasional, but all historic. Our present difficulties regarding patriarchal morality and the bloody conquest of the land of Canaan vanish in the clear light of progressive ethics and ancient customs. We need more charity

[18] See Moulton's Literary Study of the Bible and kindred books.

for that barbarous age of cruel, exterminating warfare, more insight into oriental manners and institutions, more imagination and poetic sense, more of the spirit and less of the letter. A cultivation of the newest learning about one of the oldest living peoples will promote the higher education and true culture of one of the youngest.

The educational work of the Associate Reformed Congregation has continued in various forms under successive pastors. Boys' clubs have been kept up, but without the open reading-rooms. Lectures for young men, particularly on topics of modern history and church interest, were provided for two seasons chiefly by students and instructors in the Historical Department of the Johns Hopkins University.

At the suggestion of the Rev. Oliver Huckel a joint society for young men and young women was formed. This was called the "Round Tables" and its constitution was an interesting educational experiment. The society was divided into sections. The Art section was under the direction of Mrs. J. M. Vincent; Literature, Miss Annie C. Whitney; Music, Miss Mary King; Local History and Current Topics, Judge Henry Stockbridge and Dr. J. M. Vincent. The sections all met regularly on the same evening. The first part of the meeting had always a general programme of a musical or literary character, in which all members could be interested. The various sections or "Round Tables" then reassembled in different rooms and proceeded to discuss the topics of study to which they were devoted. As a method of enlisting young people of various tastes this plan was an eminent success. By having the "Round Tables" all meet on the same evening, the enthusiasm of members was gained and yet the individual taste for study was satisfied in the class room. It was a unique experiment in popular education and deserved to be continued. The labor which fell upon several of the leaders was so great, however, in addition to their other duties that the "Round Tables" were regretfully given up, but the idea survives.

Rev. Mr. Huckel has continued the educational work of

the pulpit by giving numerous sermons on historical and literary characters. He has especially brought forward the great poets of England and America as moral teachers as well as literary artists. He has continued the monthly musical services (begun by the Rev. M. C. Lockwood) in which selections from the classical oratorios have been accompanied by explanation from the pulpit. These combined services have attracted large audiences and have proved of great educational value, since the hearers were introduced at the same time to the music and to the history and moral intent of the composition. Thus the Associate Congregational Church, as well as its former pastors, have entered into a larger, richer, fuller institutional and historic life.

It was the original intention of the author to review the educational and social work of various other progressive churches in Baltimore, and to include Jewish synagogues, but limitations of time, space, and opportunity compel the restriction of this monograph to its present proportions. He has used the institutions herein described simply as suggestive examples of the relation of the modern church to popular education, and hopes that every local society which has begun this good work will continue to develop it and to publish from time to time reports of its progress for the general encouragement.

IV.—Educational Duty of American Churches.

One of the greatest educational needs of our times is organized effort by the Church in cooperation with schools and public libraries[19] for the higher education of men and women who are already past the school age. The common schools of the country are everywhere doing their proper work; but everywhere such work breaks down at the most

[19] An illustrated monograph by the present writer on "Public Libraries and Popular Education" has lately been published by the University of the State of New York as a Home Education Bulletin, State Library, Albany, 1900.

critical period in the life of boys and girls. In the very transition from youth to adolescence, the graduates of our public schools are usually left to themselves in intellectual matters. Unless further developed by good associations in the community, by the church or other social organizations, young men and young women often retrograde instead of advancing in their mental life. To any close observer, either in our rural districts or in our large cities, it is clearly apparent that the intellectual qualities of the graduates of our excellent public school system suffer, in too many cases, from mental atrophy and actual degeneration. Things learned at school are quickly forgotten. Minds once quick and bright too often become heavy and dull. Mental faculties rust from lack of use. It is the same in Germany and England as in the United States.

The effect of this unfortunate degeneration makes itself felt in every community by the ever-increasing listlessness and inefficiency of unprogressive members of the social organism. In country districts the evil is apparent in the low state of mental and moral vitality in many households, in the neglect of good reading and of opportunities for mental and moral cultivation, also in the general inertia which sometimes affects churches, prayer-meetings, amusements, and every phase of local society. In cities, the results are often worse. There the young people who have been through the public schools are forced into the struggle for existence with no adequate preparation by industrial or technical training. They crowd the lower walks of life and there the weakest are usually trampled down. The survivors struggle on according to their strength. Life continues to be for many a running fight for mere self-support and the most pitiful rewards. The terrible competition for the simple means of living is of itself enough to repress in the minds of many young men and women all thought of further education. The wage-earning class in our large cities sink almost inevitably in the general level of intelligence as soon as the struggle for bread and butter begins.

Their intellectual situation is seldom improved by marriage, for then begins a still harder struggle for existence with the rearing and support of children. Happy the working people who can give their sons and daughters a common school education in addition to material support!

The question now arises can anything be done to relieve evil social conditions? Are boys and girls to be educated by our public schools to a consciousness of mental and moral freedom only to be allowed to sink down almost immediately to a lower level, to a tread-mill round for food and drink? Shall the sons and daughters of a free people be content with bread alone? "Why so bustle the people and cry?" said Goethe, "To get food, to beget children and feed them, the best one can." It seems unworthy of enlightened souls to give up to social vegetation and *laissez faire*. The "let alone" policy, if it had been systematically practiced throughout human history, would have left this world in barbarism and ignorance. The church in the middle ages did a great work in civilizing large portions of mankind. The whole process of converting from paganism the Roman empire and the rude nations of Northern Europe was a social, educational process through the agency of organized Christian institutions. The monastic and cathedral schools, the colleges and universities, the educational systems of the mediæval and modern world are in no small degree the outgrowth of church influences. In the United States, as we have seen in chapter one, the origin and growth of popular as well as of higher education cannot be separated historically from religious associations. Whatever may be said of sectarian foundations, the enormous influence of the church in sustaining institutions of learning cannot be disputed.

The modern state has also given society a wonderful uplift by making common school education compulsory, in rescuing the children of the poor from factories and from absolute ignorance, and in emancipating millions of virtual serfs and slaves. The time has come when society must de-

termine whether it owes further duties to the toiling masses of the people. Is there any way by which the life of the laboring man, the ordinary wage-earner, can be made better and happier? We have common schools for the children, but we need uncommon schools for adults, for young men and young women.

Aside from the continued maintenance of schools, colleges, and theological seminaries as legitimate branches of missionary effort, Christian Churches ought to organize locally, in both rural and city districts, educational societies of a more or less secular nature, according to the needs of the situation. While not slacking or abating distinctively religious work, our American Churches should cultivate a social and intellectual activity among the young people over whom church influences are already established. Libraries and reading-rooms should be established in town and country under church auspices and really good literature offered young people instead of the paltry stuff which now find its way into many Sunday School libraries.[20] Social or church classes should be instituted among young people for the systematic study of good literature, of history, political economy, and social science. The most cultivated persons in the community or local church should take charge of such classes and should hold them to a definite. systematic course upon some one great subject through a considerable period. Ideas of recreation and amusement should be subordinated to those of instruction and improvement. Thus church parlors and parish vestries might become popular seminaries for the higher education of young men and women at the most critical period in life. Thus graduates of the public schools might be led forward to higher forms of intellectual, social endeavor. The good effects of the experiment would soon be felt not only in the improved tone of the community but in the increased vital-

[20] The public libraries of this country are now doing much to correct this evil by preparing lists of really good books and by connecting schools and churches with better sources of literary supply.

ity and energy of church work. The cultivation of more general intelligence on the part of a religious society could not possibly interfere with its highest moral and spiritual aims. The churches should not, however, be content with simply instituting educational societies for the good of their own congregations. They should do educational missionary work in outlying districts. Beginning perhaps in a small way, a few enlightened and helpful persons can gradually organize a social mission in some neglected neighborhood and carry into it both light and spiritual hope. At first perhaps conventional methods of procedure should be kept in the background. The mission should be largely social and educational. An interest might first be quickened in the idea of neighborhood or village improvement. The best local talent can be stimulated and encouraged by friendly cooperation. Of course a careful preliminary study of the situation is necessary. All appearance of haste and overzeal, all needless interference and anxiety should be avoided. "He that believeth doth not make haste." By tact and good will a few persons, who have been well-trained to social and educational work in their own church circles, can effect, if not a complete reformation, at least a great improvement in some unchurched or degenerate community.

CONCLUSION.

On all moral and social questions the Church ought to be a local and it may become a national educator in America. As we have seen it has been the custom from colonial days for the clergy to inform the people on topics of vital moment to the town and commonwealth. In our own time no great issue can be long before the country without ministers of every denomination publicly discussing it. The favorite topics are those relating to education, temperance, social reform, public morals, good government, good laws, relief of the poor and oppressed, charity organization, home and foreign missions, colonial policy, Cuba, China and international relations. The present paper

is a plea for further educational extension by organized church agencies. We have given colonial examples of the Educational Church and we have reviewed a few living examples of the Church still teaching. Here in conclusion are a few thoughtful and timely suggestions.

The Rev. Dr. Henry Van Dyke, formerly pastor of the Brick Church in New York City, in an address on Democracy and Culture at the University of Chicago, April 1, 1899, said: "The cornerstone of true democracy is culture. Culture must begin and continue with a fine disregard of pecuniary returns. It must be catholic, genial, disinterested. Its object is to make the shoemaker go beyond his last, and the clerk beyond his desk, and the surveyor beyond his chain, and the lawyer beyond his brief, and the doctor beyond his prescription, and the preacher beyond his sermon. What we need at present is not new colleges with a power of conferring degrees, but more power in the existing colleges to make men. To this end let them have a richer endowment, a fuller equipment, but above all a revival of the creative ideal. And let everything be done to bring together the high school, the normal school, the grammar school, the primary school and the little red schoolhouse school in the harmony of this ideal. The university shall still stand in the place of honor, if you will, but only because it bears the clearest and most steadfast witness that the end of culture is to create men who can see clearly, imagine nobly and think steadily. . . .

"I believe that democracy, as it is embodied in this Republic is, next to the Christian religion, the most precious possession of mankind. I believe that it can be preserved only under the light and leading of true culture, which makes the demagogue ridiculous, the anarchist loathsome, the plutocrat impotent, and the autocrat impossible. I believe that the best culture is that which makes not selfish and sour critics, but sane and sober patriots. I believe that no man has the right culture unless he is willing to put his clearer vision, his loftier imagination and his deeper thought

at the service of his country and humanity. I believe in culture. I believe in democracy. By democracy purified, by culture diffused, God save the State!"

Among the monographs on "American Social Economics," prepared for the Department of Social Economy of the Paris Exposition of 1900 is one entitled "Religious Movements for Social Betterment," by Dr. Josiah Strong, President of the League for Social Service, 105 East 22d Street, New York. He calls attention to the social nature of the present manifest changes in religious activity and cites many of the best examples of the modern Institutional Church. Mr. Benjamin Kidd, in his "Social Evolution" (1894), argued that religion has ever been the principal factor in social progress. Dr. Strong emphasizes the fact that recent social changes in religious activities are due in part to the progress of science which has revealed the interdependence of body and mind and the influence of physical environment on spiritual life. He says "many thinking men to-day fail to perceive the profound importance of the religious changes which are taking place, or to suspect that they are destined to produce, and are even now beginning to produce, a new type of civilization.

"So long as the churches lost sight of the kingdom of God, that is, of Christ's social ideal, as something possible of realization on the earth, they confined their efforts almost wholly to fitting men for a perfect society in heaven, and accordingly directed their efforts to the spiritual element in man, giving scant attention to his body and to physical conditions. Thus the churches very naturally looked upon their saving mission as confined not only to the individual but to a fraction of him.

"As fast as the churches regain Christ's point of view and come to believe that the earth is to be redeemed from its evils, they see that it is their duty to labor for the realization of Christ's social ideal, and they adapt their methods accordingly; they no longer look upon duty as a circle described around the individual, but rather as an ellipse described around the individual and society as the two foci.

"As the churches regain the Christian social ideal and discover that the religion of Christ was intended to deal with the body as well as with soul, they perceive that philanthropy is to be recognized as a part of religion, not as something to be distinguished from it; and they accordingly extend their activities to include objects which a generation ago would have been deemed quite foreign to their proper work."

V.—Select Bibliography.

Materials for further and more detailed study of this interesting and progressive social movement of the American church in our time may be found, among other sources of information, in the following select list of authorities partly chosen from the numerous and varied collections by the present writer. The best and latest of all authorities is the one above cited, Dr. Josiah Strong's contribution to the series of monographs on "American Social Economics," prepared under the joint editorship of H. B. Adams and Richard Waterman, Jr., for the Paris Exposition, 1900. Dr. Strong's monograph is entitled "Religious Movements for Social Betterment," and is to be obtained from the League for Social Service.[21] A briefer and earlier publication was a little tract entitled "Forward Movements (containing concise statements regarding Institutional Churches, Social Settlements, and Rescue Missions"), published at 4 cents in the Congregationalist Handbook Series, 1 Somerset Street, Boston, Mass. Another valuable series of papers on "Progressive Methods of Church Work" in various denominations, including "a Roman Catholic parish," was published in the Christian Union (now "The Outlook") from 1891 to 1893. See also the Christian Union for September 1, 1894, on the "Institutional Village Church." An article on this same subject appeared in The Citizen, the Philadelphia organ of the American Society for the Extension of University Teaching, November, 1895.

[21] 105 East 22d Street, New York.

Some excellent papers on the Institutional Church have been prepared by Johns Hopkins University graduates, *c. g.*: (1) The Civic Church, by Albert Shaw, for his own magazine, The American Monthly Review of Reviews for October, 1893. (2) The Relation of the Church to Social Reform, by Dr. David Kinley, published in the Bibliotheca Sacra, Vol. 50, 1893. (3) The Christian Minister of Sociology, by John R. Commons, Publications of the Christian Social Union in the United States, No. 4, press of Guggenheimer, Weil & Co., Baltimore, 1891. (4) The Educational Function of the Church, by Dr. E. A. Ross, The Outlook, August 28, 1897.

An excellent address on "Civic Christianity" by Rev. Edwin Heyl Delk, of Hagerstown, Md., was published in the Lutheran Quarterly for January, 1897. In a paper on "The Civic Spirit in Church Building" by the same author in The Lutheran World, *circa* January, 1897, Mr. Delk says: "The civic spirit, if it ever arrives at its true and logical fruitage must express itself in a substantial and beautiful church architecture."

Mr. Talcott Williams, editor of *The Press*, Philadelphia, published an excellent address on "The Church's Duty in the matter of secular activities." The address was given before the Church Congress in the United States in Music Hall, Boston, Mass.

Rev. E. M. Fairchild, an Albany lecturer for the Educational Church Board, has published two valuable papers of church educational interest: (1) The Function of the Church (American Journal of Sociology, September, 1896) and (2) Society's Need for Effective Ethical Instruction in Church and School and the Suggestion of an Available Method (*Ib.*, January, 1899). The method suggested is that of visual instruction in ethics by pictures or lantern views showing object lessons in good or bad conduct to children and other people.[22] The Catholic Church has understood

[22] One of the best actual realizations of this visual method is that now practiced in city churches by the President of the League for

this method and has cultivated the educational, moral, and religious use of art in her great churches and cathedrals from the Middle Ages down to our own times. One of the best modern papers on "The Relation of the Church to the School" is an article by Samuel T. Dutton, Superintendent of Schools, Brookline, Mass., published in his book called "Social Phases of Education" (Macmillan, 1899). See also the subject catalogues of good public libraries and Poole's Index, revised by the American Library Association, with the annual supplements by Mr. W. I. Fletcher of Amherst College, under "Church," "Institutional," "Schools," and "Education." Much additional material will be referred to in the new edition of the Amer. Lib. Assoc. Index now in press with Houghton, Mifflin & Co., to be issued about January 1, 1901.

Social Service, Dr. Josiah Strong, and the efficient Secretary of the League, Dr. William H. Tolman, who has assisted Mayor Strong in various vigorous campaigns for good government in New York City, by the attractive pictorial method of showing good and bad specimens of public work by means of lantern views to great masses of people assembled out doors. *Look on this picture and now on this.* "By their fruits ye shall know them" applies to city government as well as to city churches. *The Outlook* says editorially, August 25, 1900: "Among the great departments of the Paris Exposition is that of Social Economy, in which are exhibited the various movements and institutions for the improvement of social conditions. In this section a large place is filled by the exhibit of the League for Social Service, which received the highest award, a grand prize. This international recognition places the League among the foremost institutions in the world, and is a tribute to the high character and efficiency of this young society, which will celebrate its second birthday on September 1. The League for Social Service is practically the Musée Social of America."

THE STRUGGLE FOR RELIGIOUS FREEDOM IN VIRGINIA:

THE BAPTISTS

SERIES XVIII

NOS. 10-11-12

JOHNS HOPKINS UNIVERSITY STUDIES

IN

HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics are present History.—*Freeman*

THE STRUGGLE FOR RELIGIOUS FREEDOM IN VIRGINIA: THE BAPTISTS

BY WILLIAM TAYLOR THOM

BALTIMORE

THE JOHNS HOPKINS PRESS

OCTOBER-NOVEMBER-DECEMBER, 1900

Copyright 1900, by
N. MURRAY

The Lord Baltimore Press
THE FRIEDENWALD COMPANY
BALTIMORE, MD., U. S. A.

CONTENTS

	PAGE
The Struggle for Religious Freedom and for Religious Toleration	9-10
The Baptists—General, Regular, Separate	10-12
Thomas, David. Title of his Book	11-12
Stearns, Marshall, Harriss	12-14
Separates North of James River, First Church	14
A Baptist Church, Constitution of	14
The Masses and the Baptists. Revivals	14-16
Vulgar Opinions about the Baptists	16-21
Persecution by Civil Authorities	21
Baptist "Apostles"	21-26
Arrests on Peace-Warrants. Opinion of House	26-28
The Year 1770	28-30
Growth of Baptists under Persecution	30
Causes: Religious, Social, Economic, Political	30-38
Population of Virginia and Number of Baptists	38-42
Established Clergy and Baptist Preachers	42-44
Baptists and the Legislature up to Middle of 1774	44-48
Baptists in the Revolution	48-50
Baptists to Preach before Soldiers	50-54
Petitions to General Assembly, 1776	54-58
Dissenters Exempted from Tithes	58-62
General Assessment and Marriages, 1778	62-67
Salaries of Clergy	67
Petitions and Bills as to Marriage Laws	67-73
General Baptist Committee Organized, 1784	73-74
Marriage Laws and Bill for General Assessment, 1784	74-77
Overseers of the Poor	77-78
Bill for Religious Freedom: Leland	78-81

PAGE

Sale of Glebes and Repeal of Act Incorporating the Protestant Episcopal Church 81-82
Letter of Washington as to Religious Freedom . . 83-85
Repeal of Glebe Law, 1799 85-89
Bill for Sale of Glebes, 1802 89-91
Baptists and Presbyterians in Virginia 91-92
Baptist Movement Puritan 92-93
Summary 93-94
Map . . . . . Frontispiece
Preface 7-8
Bibliography 94-96

PREFACE

The aim kept steadily in view in the following pages is to set forth in all good faith the part played by the Baptists in bringing about Religious Freedom in Virginia; not to give a history of the Baptists themselves. That has been done only in so far as seemed needful to make plain the causes of their sudden rise and the sources of their influence among the people. The description of their political method is, I hope, clear; but that description would have been much more accurate and elaborate, as I believe, had some of the original manuscripts still in existence been accessible. The original petitions now slowly yielding to the tooth of time in the archives of the Virginia State Library would, through the signatures attached to them, have thrown great light upon the political conditions of the counties whence they came, as well as upon the membership of those General Assemblies to which they were addressed and of those which came immediately after. These manuscripts should have been published long ago.

It is hardly probable that I have reached all material now accessible, and I shall be glad of information throwing further light upon the subject; particularly so as I hope hereafter to make yet more plain what was accomplished by the Baptists in comparison with the action of the other denominations in the same struggle for freedom in religious matters.

My work on this subject was practically done before I became aware that the "Documentary History of the Struggle for Religious Freedom in Virginia," by Rev. C. F. James, was appearing in the columns of the *Religious Herald*, and before I could lay my hands on the edition of

Semple's *History*, by Rev. G. W. Beale, whom I hasten to thank for valuable aid in the preparation of the map prefixed to this sketch. I beg to make my acknowledgments also to Prof. H. B. Adams, Dr. J. C. Ballagh, and Mr. T. R. Ball, of the Johns Hopkins University; Prof. C. L. Cocke, of Hollins Institute, Virginia; Dr. J. L. M. Curry, of Washington, D. C.; Hon. A. R. Spofford, and Mr. Hugh Morrison, of the Library of Congress, and Mr. W. W. Scott, of the State Library of Virginia, for aid and courtesies most opportunely extended.

The map illustrating the growth of the Baptists between 1770 and 1776 is distinctly a trial map and does not lay claim to final accuracy. I have reproduced the crude outlines of the old Lewis map in the hope of impressing upon my readers the difference between the Virginia of the Revolutionary times and the Virginia of to-day. In spite of the help of Dr. Beale, I do not feel at all sure that the location of some of the churches is not wrong by many miles. Some of the churches, too, were not actually constituted until after 1776, but they were in process of formation and had their political effect before the end of that year.

Were it the custom of these "Studies," I should have asked permission to dedicate this sketch to my good friends, Professor Charles L. Cocke, Superintendent of Hollins Institute, Virginia, and Dr. J. L. M. Curry, Secretary of the Peabody and Slater Funds, with both of whom it has been my pleasant lot to work in the great field of school instruction, and who, through long and honored lives, have illustrated, the one as the foremost champion of female education in the South, the other as statesman, educator, and the dispenser of a vast educational charity, the highest type of noble Baptist manhood.

1899. Wm. Taylor Thom.

THE STRUGGLE FOR RELIGIOUS FREEDOM IN VIRGINIA: THE BAPTISTS

I recollect with satisfaction that the religious society of which you are members have been, throughout America, uniformly and almost unanimously, the firm friends to civil liberty, and the persevering promoters of our glorious revolution.— George Washington's Letter of 1789.

The struggle for Religious Freedom in Virginia was really a part of that greater struggle for political freedom with which it was so nearly coincident in time. Much the same causes led to each; the logic of both was the same; and there was no time at which the religious struggle was not largely political and not clearly seen to be so by the leaders of thought. The struggle for independence was against external coercion; the struggle for religious freedom was against that external coercion as represented within the colony itself. The failure of the struggle for independence meant the failure of the struggle for religious freedom; but the achievement of independence did not necessarily mean the attainment of religious freedom. Hence the religious struggle outlasted the political, and hence also it assumed towards the end a vindictiveness not pleasant to contemplate.

Religious toleration had been attained some years before the Revolution drew near; and for that, credit is due chiefly to the Presbyterian population of the colony, as Dr. McIlwaine has shown in his account of the "Struggle for

Religious Toleration in Virginia."[1] Other elements of the population became actively involved as the dissatisfaction among the colonists hardened into resistance against the mother country; and among these elements, active in bringing about religious freedom, no one perhaps was of greater importance than the Baptists, with whom we have to do in the following pages.

When the struggle for religious toleration practically ceased with the French and Indian War and the "Parsons' Cause" in 1763, the Baptists were not of sufficient consequence to be even noticed by the historian. Eleven years later they are preparing to petition the legislature for the abolition of the Established Church. Evidently we must know something of them, must know who and whence they were, as a preliminary to understanding what they helped to bring about.

The accepted version, for the matter is disputed somewhat, seems to be that Baptists first came into Virginia about the year 1714 as English emigrants; that they settled in the southeastern part of the colony; and that they remained there practically unnoticed until they were taken up in the movement of which we are going to speak. After various vicissitudes, they still had a church at Pungo in Princess Anne county in 1762, but they had not influenced the life of the colony. They were known, it seems, as "General" Baptists.

About the year 1743 another party of Baptists came from Maryland into the lower Valley and settled at Mill Creek on the Opeckon in Berkeley county. About a dozen years later, in consequence of inroads of the Indians, a part of this congregation and their minister, John Garrard, probably a Pennsylvanian, removed across the Blue Ridge and settled on Ketocton Creek in Loudoun county, organizing

[1] Cf. H. R. McIlwaine, Religious Toleration in Virginia, Johns Hopkins University Studies in Historical and Political Science, 1894.

themselves into a church about 1755-56. A few years later, David Thomas, from Pennsylvania, a man of vigorous mind and, we are told, of a classical education, settled at Broad Run in Fauquier county, where a church was constituted and he was chosen pastor, probably in 1761. Thomas and Garrard travelled and preached extensively in this piedmont country. In 1770 these Baptists were spread through the Northern Neck of Virginia above Fredericksburg in the counties of Stafford, Fauquier, and Loudoun, and they had churches at that time at Mill Creek, in Berkeley county; at Smith's Creek in Shenandoah county; at Ketocton, New Valley, and Little River, in Loudoun county; at Broad Run, in Fauquier county; at Chappawamsic and Potomac Creek, in Stafford county; at Mountain Run, in Orange county; at Birch Creek, in Halifax county; with a membership, all told, of six hundred and twenty-four.[2]

These were known as the "Regular" Baptists; and although they were from time to time hindered by mobs and reprimanded by magistrates, they were not seriously interfered with. "The reason why the Regular Baptists were not so much persecuted as the Separates," says Semple, "was that they had, at an early date, applied to the General Court, and obtained licenses for particular places, under the toleration law of England; but few of their enemies knew the extent of these licenses; most supposing that they were, by them, authorized to preach anywhere in the county. One other reason for their moderate persecution perhaps was that the Regulars were not thought so enthusiastic as the Separates; and having Mr. Thomas, a learned man, in their Society, they appeared much more respectable in the eyes of the enemies of truth."[3] It is important

[2] Fristoe, Ketocton Association, pp. 5-10; Semple, 288; cf. also Semple, 43, 49, 141, 169, 174, 194, 290.

[3] The title of Thomas's little book is worthy of transcription in this connection:

"The Virginian Baptist: or a View and Defence of the Chris-

to note this two-fold statement, that the Regular Baptists took out licenses from the General Court in due form of law, and that the presence of David Thomas as an educated man in their midst was of weight in protecting them against their neighbors.

The great Baptist influence in Virginia was that of the "Separate" Baptists, as they were called. They came into Virginia from North Carolina in the following way:

In 1754, Shubal Stearns, a native of Boston, who had become a Separate Baptist preacher in 1751, came south with a small party of New Englanders, called of the Spirit, as he conceived, to a great work. They halted first at Opeckon in Berkeley county, Virginia. Here he met his brother-in-law, Daniel Marshall, formerly a Presbyterian, now a Baptist preacher, who was just returned from a mission among the Indians. After a short stay in this part of the country, they moved on south to Guilford county, North Carolina, and, establishing themselves on Sandy Creek, founded a church which soon swelled from 16 to 606 members.[4]

Daniel Marshall made visits into Virginia, preaching and baptizing converts. "Among them was Dutton Lane (originally from near Baltimore, Maryland), who, shortly after his baptism, began to preach; a revival succeeded,

---

tian Religion, as it is professed by the Baptists of Virginia. In three Parts. Containing a true and faithful Account (1) Of their Principles, (2) Of their Orders as a Church, (3) Of the principal Objections made against them, especially in this Colony. With a serious Answer to each of them.

By David Thomas, A. M., and Baptist Minister of Fauquier, in Virginia.

Non haec tibi nunciat Auctor Ambiguus: Non ista vagis rumoribus. Ipse ego tibi. *Ovid Met.*

And thou Son of Man, show the House to the House of Israel, and let them measure the Pattern. Ezek. xliii., 10, 11.

Baltimore:

Printed by Enoch Story, living in Gay Street. MDCCLXXIV."

[4] Semple, p. 5.

and Mr. Marshall at one time baptized 42 persons. In August, 1760, a church was constituted under the pastoral care of the Rev. Dutton Lane. This was the first Separate Baptist church in Virginia, and in some sense the mother of all the rest." [5] This church seems to have been the Dan River church in Pittsylvania county.[6] "Soon after Mr. Lane's conversion," continues Semple, "the power of God was effectual in the conversion of Samuel Harriss, a man of great distinction in those parts." [7] "Samuel Harriss, commonly called Colonel Harriss, was born in Hanover county, Virginia, January 12th, 1724. Few men could boast of more respectable parentage. His education, though not the most liberal, was considerable for the customs of that day. When young, he moved to the county of Pittsylvania, and as he advanced in age, became a favorite with the people as well as with the rulers. He was appointed church warden, sheriff, a justice of the peace, burgess of the county, colonel of the militia, captain of Mayo fort, and commissary for the fort and army. All these things, however, he counted but dross, that he might win Christ Jesus and become a minister of His word among the Baptists, a sect at that time everywhere spoken against. . . . In 1759 he was ordained ruling elder. His labors were chiefly confined, for the first six or seven years, to the adjacent counties of Virginia and North Carolina, never having passed to the north of James River until the year 1765.[8] In January, 1765, upon the invitation of Allen Wyley, of Culpeper, a convert of the Regular Baptists, Harriss went to that county and preached the first day at Wyley's house. When he began to preach the next day, a mob appeared with whips, sticks and clubs, and so interfered that Harriss went that night over into Orange. Here he preached for many days to great crowds. In 1766 some of the young converts of these meetings went to Harriss's house to bring

---

[5] Ibid., p. 5.
[6] Beale's Semple, 17, 65.
[7] Semple, 5.
[8] Semple, Biography of Harriss.

him back to Orange. They soon returned, bringing with them also the Rev. James Read of North Carolina. Arriving in Orange within the bounds of what became afterwards the Blue Run Church, they found a large congregation met together to whom they preached. The next day they preached at Elijah Craig's to a 'vast crowd.' The 'Regular' preachers, Thomas and Garrard, were present also. The Separates and the Regulars could not unite, and the next day both parties held meetings and both baptized converts. Harriss and Read went on southerly through Spottsylvania into the upper parts of Caroline, Hanover, and Goochland. The next year they returned, accompanied by Dutton Lane. Together they constituted[9] the first Separate Baptist Church north of James River. This took place on the 20th of November, 1767. The church was called *Upper Spottsylvania*, and consisted of twenty-five members, including all the Separate Baptists north of James River. This was a mother to many other churches."[10] Read and Harriss continued, we are told, their visits to these parts of the country with remarkable results for about three years longer, up to about 1770. They baptized sev-

---

[9] "*The Materials and Form of a Baptist Church.*—The Baptist Church consists in a certain number of persons, called by the Gospel out of the world, baptized on profession of their faith, and federally united together, to worship GOD, and rule itself according to His Word, independent of any other society whatever." Thomas, The Virginian Baptist, p. 24.

"*The Constitution of a Baptist Church.*—The constitution of a Church is nothing else, but the solemn entrance of a number of persons into Covenant as observed above and a public declaration of their having done so. And to this end several things are requisite, as: 1. A previous season of fasting and prayer. . . . 2. Calling an orderly minister to their aid. . . . 3. An inquiry into the qualifications of the candidate. . . . 4. A declaration of the persons to be joined in covenant, showing their willing consent to give themselves to the Lord, and to one another as a people separated from the world . . . together with their hearty purpose to reject all error, and avoid every wicked and unholy way." Thomas, The Virginian Baptist, 26-27.

[10] Semple, 10.

enty-five persons at one time, it is said, and as many as two hundred on one of their journeys. Hundreds of men would camp out all night on the ground in order to hear them the next day. People travelled more than one hundred miles to go to their meetings; to go forty or fifty miles was common. More churches were soon needed. "Accordingly, on the second day of December, 1769, *Lower Spottsylvania Church* was constituted with 154 members, who chose John Waller for pastor. He was consecrated to this office June 2, 1770. Lewis Craig was consecrated pastor to the mother church, November, 1770. *Blue Run Church* was constituted December 4, 1769, choosing Elijah Craig for their pastor; he was consecrated May, 1771."[11]

The work now went rapidly forward. A popular tide began to rise. Each new convert became a zealous missionary. The accepted preachers and leaders went hither and thither incessantly. Jeremiah Moore said he had "travelled and preached distances sufficient to reach twice around the world."[12] Samuel Harriss "became almost a constant traveller. Not confining himself to narrow limits, but led on from place to place; wherever he could see an opening to do good, there he would hoist the flag of peace. There was scarcely any place in Virginia in which he did not sow the Gospel seed."[13] To illustrate:

"Arrested in Culpeper and carried into court as a disturber of the peace, he was ordered not to preach in the county again within the twelvemonth on pain of going to jail. From Culpeper he went into Fauquier and preached at Carter's Run. From thence he crossed the Blue Ridge and preached in Shenandoah. On his return from thence, he turned in at Captain Thomas Clanahan's, in the county of Culpeper, where there was a meeting. While certain young ministers were preaching, the Word of God began to burn in Colonel Harriss's heart. When they finished,

---

[11] Semple, 11.
[12] Ibid., 309.
[13] Semple, Biography of Harriss, 379.

he rose and addressed the congregation: 'I partly promised the devil, a few days past, at the courthouse, that I would not preach in this county again in the term of a year. But the devil is a perfidious wretch, and covenants with him are not to be kept; and, therefore, I will preach.' He preached a lively, animating sermon. The court never meddled with him more." [14]

These details concerning Samuel Harriss have been given for the two-fold purpose of showing the extreme activity of the Baptist missionaries in these years, and of illustrating the way in which the attacks upon these itinerant preachers began. In his own county, where he was known and respected, Harriss seems never to have been molested. The social element was in his favor. Thus, it is related of him that he wished to preach to the officers and soldiers. "An opportunity offered in Fort Mayo, and Mr. Harriss began his harangue, urging most vehemently the necessity of the new birth. In the course of his harangue, an officer interrupted him, saying: "Colonel, you have sucked up much eloquence from the rum cask to-day. Pray give us a little, that we may declaim as well when it comes to our turn." Harriss replied: "I am not drunk," and resumed his discourse. He had not gone far before he was accosted by another in a serious manner, who, looking in his face, said: "Sam, you say you are not drunk; pray, are you mad, then? What the devils ails you?" Colonel Harriss replied, in the words of Paul: "I am not mad, most noble gentleman." [15] Away from home, however, Harriss did not meet with the same courtesy from individuals. Indeed, it is evident that at first the masses of the people were opposed to the Baptists and feared them. The presence of the rabble is shown by the kind of attack made upon them. Some illustrations may make plainer the temper of the times. Speaking of the early work of the Regular Baptists in Northeastern Virginia, Semple says: "Sometimes when the

[14] Semple, ibid., 282.

[15] Semple, ibid., 381.

preachers came to a place for the purpose of preaching, a kind of mob would be raised, and by violent threats they hindered the preacher."[16] Threats became blows. Colonel Harriss, Rev. John Koones and others were beaten with clubs and cuffed and kicked and hauled about by the hair; mobs ducked some preachers till they were nearly drowned; a live snake and a hornet's nest were, upon different occasions, thrown into the meetings to break them up; and drunken ruffians insulted the preachers.[17] That the preachers were themselves partly responsible for this we learn from what Semple says about them after the close of the revival of 1785-92: "Their preachers were become much more correct in their manner of preaching. A great many odd tones, disgusting whoops, and awkward gestures were disused; in their matter also they had more of sound sense and strong reasoning. Their zeal was less mixed with enthusiasm, and their piety became more rational."[18] But in the beginning they "whooped" in "many odd tones." Leland tells us also that "The Separates were the most zealous, and the work among them was very noisy. The people would cry out, fall down, and for a time lose the use of their limbs, which exercise made the bystanders marvel; some thought they were deceitful, others that they were bewitched, and many, being convinced of all, would report that God was with them of a truth."[19] Some of these people, we are told, would be nervously affected; they had the "jerks,"[20] muscular contortions; they had the "barks," and yelped like dogs; they rolled on the ground in agonized dread of hell-fire and eternal damnation, or they leaped into the air with ecstatic shouts at the glory of their newfound salvation. We see here a frame of mind like that of Bunyan when he heard voices warning him, or like that of Balfour of Burley, with sharp sword out, lunging against

---

[16] Semple, 294.
[17] Semple, 20, 185, 382, 309, 357, 413: Fristoe, *passim.*
[18] Semple, 39. [19] Leland, p. 105. [20] Semple, 320, note.

the very devil himself.[21] We seem, as we read, to be on the verge of slipping back into the Middle Ages; of seeing again the sailors of Columbus on their knees as they chant the Gospel of John to ward off the oncoming water-spout; of witnessing the dancing mania reproduced, or of hearing again the enthusiastic shouts of the Crusading multitudes: "Noel! Noel! God wills it!" In truth, many of these people were but little removed from the Middle Ages in the intensity of their religious emotion and belief. The miraculous became to them the commonplace of God's chosen ones, and the commonplace became miraculous.[22]

---

[21] Cf. Sir Walter Scott, "Old Mortality," ch. 43, and notes.

[22] "*Objection XIV. Against making a Noise, etc., under Preaching.* You pretend to stick very close to the word of GOD, to be sure! But where, I pray ye, do you read of such noisy meetings! What loud crying! What jumping up! What falling down! What roaring, schreeching, screaming! Does the Holy Scripture countenance such wild disorder? . . . .

Answer.—As these horrid vociferations and obstreperous commotions, mentioned in the objection, never were the effect of my preaching, nor are approved of by our churches, as any part of religion; I am no ways obliged to vindicate any or all of them. However, being it is cast upon the poor Baptists as an odium peculiar to us, I shall give a short history of this modern phenomenon, as follows:

The first appearance of it was under the preaching of the Rev. George Whitefield, a noted priest of the Church of England, who died two or three years ago, near Boston in New England. From him certain Presbyterians catched the fire, and zealously fanned the flame for some years. At last it kindled among some Baptists, where it continues burning to this day. Now, whether this fire is celestial or terrestrial, or of what nature it is, as I pretend not to know, I shall not undertake to determine. Those who think it is of GOD, are the fittest to defend it. *They are of age, ask them, they shall speak for themselves.* I confess I can find no account of it in the word of GOD."

Thomas, The Virginian Baptist, 63.

Evidently Thomas, and we may suppose the Regular Baptists generally, disapproved of the "warm" and "enthusiastic" meetings of the Separates.

I remember being greatly impressed some years ago by the remark of a young Swedish poet then visiting this country that among the things which seemed most strange to him were the absence of the folk songs and hymns and the presence of the (to

But those who were not swept along by this tide of emotion were both alarmed and angered by hope so exalted, by despair so abject, by zeal so intrusive. To many the very name Baptist was terrifying. They were thought to be sacrilegiously cruel in neglecting the baptism of their children, their own flesh and blood; and they were dreaded as monstrous beings. " . . . In the early part of my ministry," says Benedict, " a very honest and candid old lady, who had never been far from her retired home, said to me in a very sober tone: 'Your society are much more like other folk than they were when I was young. Then there was a company of them in the back part of our town, and an outlandish set of people they certainly were. For yourself would say so if you had seen them. As it was told to me, you could hardly find one among them but what was deformed in some way or other. Some of them were harelipped, others were blear-eyed, or hump-backed, or bowlegged, or clump-footed, hardly any of them looked like other people. But they were all strong for plunging, and let their poor ignorant children run wild, and never had the seal of the covenant put on them.' "[23]

With these things—strange to us—in mind, we can better understand why a woman should be whipped by her husband for being baptized by the Rev. John Leland, and why an ex-captain should draw his sword to kill Leland as he preached.[24] We can better understand, too, the feeling on

---

him) astonishing exhibitions of religious emotion witnessed in our camp-meetings and revivals. Of the last he wanted an explanation. I had none to offer. Matthew Arnold, in his essay " On the Study of Celtic Literature," maintains that this emotional religion of the English, as compared with the other Teutons, is due to the Celtic element. Perhaps some historico-philological Matthew Arnold in our midst may find in the sources of Virginia colonization and in the names of the early Virginia Baptists and Presbyterians some evidence of a Celtic influence present in those surprising revivals.

Cf. Matthew Arnold, On the Study of Celtic Literature, v, p. 94.

[23] Benedict, Fifty Years, 92 ff.

[24] Leland, Writings, 20, 27, etc.

the Baptist side that the avenging arm of the Lord was with them. Thus a child of Satan, a landlord, opened his house apparently to Leland's preaching but really to make money out of the crowds gathered to listen. Swiftly the wrath fell on him. "Some weeks afterwards . . . I saw the landlord's chimney standing but the house consumed by fire. When I saw it, my heart burst out in sacred language, Righteous art thou, Lord God Almighty, because thou hast judged thus!"[25] Upon another occasion, as "Robert Ware was preaching, there came one Davis and one Kemp, two sons of Belial, and stood before him with a bottle and drank, offering the bottle to him, cursing him. As soon as he closed his service, they drew out a pack of cards and began to play on the stage where he had been standing, wishing him to reprove them, that they might beat him." Now mark the sequel. "It is worthy of note that these two men both died soon after, ravingly distracted, each accusing the other of leading him into so detestable a crime."[26] The offence shows the popular feeling against the Baptist preachers; the punishment shows that the feeling has veered around in favor of the Baptists. So, too, when James Ireland was in jail in Culpeper county, "they attempted to blow him up with gunpowder, but the quantity obtained was only sufficient to force up some of the flooring of his prison. The individual who led in this infamous conduct was, shortly after, in a hunting excursion, and, while asleep in the woods, bitten by a mad wolf, of which wound he died in the most excruciating pain. There was also an attempt made by Elder Ireland's enemies to suffocate him by burning brimstone, etc., at the door and window of his prison. A scheme was also formed to poison him, but the mercy of God prevented."[27] We see the popular myth-making imagination in full swing here, and, as in the case cited above, on the Baptist side. The

[25] Leland, 23.

[26] Semple, 20, and note.

[27] J. B. Taylor, Virginian Baptist Ministers, 1st Series, 3d Edition, 1860, p. 120.

beasts of the field become the avengers of the Lord's anointed.

With the coming of the Separate Baptists north of James River, this opposition of the lower classes soon ceased. It was found that these men were reformers and not incendiaries. The people seem soon to have recognized that the Baptists were fighting their battles. After about 1770, the attacks and arrests were rarely made by the populace, and this year may be taken as roughly marking the popular reaction in favor of the Baptists and the beginning of the persecution by the civil authorities.

As we have already seen, Colonel Harriss was arrested and brought before the Court in Culpeper county; nor is it surprising that the civil authority should have laid hold of men whom their familiar acquaintances took to be either drunk or crazy, so new and strange seemed the manner and the matter of their talk. The magistrate who had Moore arrested while preaching (in Fairfax county, 1773) and ordered him to prison, wrote "his *mittimus* . . . in these remarkable words: 'I send you herewith the body of Jeremiah Moore, who is a preacher of the Gospel of Jesus Christ, and also a stroller.'"[28] When Waller and some others were arrested in Middlesex county, in 1771, the authorities "first searched their saddle-bags to find treasonable papers."[29] There were many honest, well-meaning people in Virginia to whom *Baptist* called up *Anabaptist* with a force that sent the cold shivers down their backs—and fear is proverbially cruel.[30]

"The first instance of actual imprisonment, we believe, that ever took place in Virginia, was in the county of Spottsylvania. On the fourth of June, 1768, John Waller, Lewis Craig, James Childs, etc., were seized by the sheriff

---

[28] Semple, 309. [29] Ibid., 18.

[30] Fristoe, 65 ff., "They were charged with design . . . when once they supposed themselves sufficiently strong, that they would fall on their fellow subjects, massacre the inhabitants and take possession of the country."

and hauled before three magistrates, who stood in the meeting-house yard, and who bound them in the penalty of one thousand pounds, to appear at the court two days after. At court they were arraigned as disturbers of the peace. . . . They (the Court) offered to release them if they would promise to preach no more in the county for a year and a day. This they refused, and, therefore, were sent into close jail. As they were moving on from the courthouse to the prison, through the streets of Fredericksburg they sang the hymn—

'Broad is the road that leads to death,' etc.

This had an awful appearance." After four weeks confinement, Lewis Craig was released from prison, and immediately went down to Williamsburg to get a release for his companions. He waited on the deputy-governor, the Hon. John Blair, stated the case before him,[31] and received a

[31] This letter has been often referred to and sometimes quoted. It deserves to be better known. The sidelight it throws upon both the Established Church and the Baptists is interesting.

"*Sir*:—I lately received a letter, signed by a good number of worthy gentlemen, who are not here, complaining of the Baptists; the particulars of their misbehaviour are not told, any further than their running into private houses and making dissensions. Mr. Craig and Mr. Benjamin Waller are now with me, and deny the charge; they tell me they are willing to take the oaths, as others have. I told them I had consulted the Attorney-General who is of opinion that the general court only have a right to grant licenses, and, therefore, I referred them to the court. But on their application to the attorney-general, they brought me his letter, advising me to write to you, that their petition was a matter of right, and that you may not molest these conscientious people so long as they behave themselves in a manner becoming pious Christians, and in obedience to the laws, till the court, when they intend to apply for license, and when the gentlemen, who complain, may make their objections and be heard. The act of toleration (it being found by experience that persecuting dissenters increases their numbers) has given them a right to apply, in a proper manner for licensed houses, for the worship of God, according to their consciences; and I persuade myself, the gentlemen will quietly overlook their meetings, till the Court. I am told they administer the Sacrament of the Lord's supper near the manner we do, and

noble letter for the King's Attorney in Spottsylvania, in which the deputy-governor said that the prisoners had a right to petition the General Court for licenses and urged moderation and toleration of their meetings until the next meeting of the court. "When the letter came to the Attorney, he would have nothing to say in the affair. Waller and the others continued in jail forty-three days, and were then discharged without any conditions. While in prison they constantly preached through the grates. The mob without used every exertion to prevent the people from hearing, but to little purpose,"[32] for converts were made notwithstanding.

This was a great triumph for the Baptist prisoners and their principles, a triumph at once over the civil authorities and over a hostile mob.

In like manner, in December, 1770, William Webber and Joseph Anthony went from Goochland across James River to Chesterfield and began preaching. They were promptly arrested and put into prison, where, as they refused to bind themselves, they staid until March following, in the meantime preaching through the prison grates to many people.[33]

Commenting on this occurrence, Campbell says:[34] "The persecutions of the Baptists commenced in Chesterfield in 1770, and in no county was it carried further. According to tradition, Colonel Archibald Cary, of Ampthill, was the

---

differ in nothing from our Church, but that of Baptism, and their renewing the ancient discipline, by which they have reformed some sinners and brought them to be truly penitent. Nay, if a man of theirs is idle and neglects to labor and provide for his family as he ought, he incurs their censures, which have had good effects. If this be their behaviour, it were to be wished we had some of it among us. But, at least, I hope all may remain quiet till the Court.

I am, with great respects to the Gentlemen, sir,

Your humble servant,

Williamsburg, July 16, 1768." JOHN BLAIR.

Given by Semple, 15-16, and also found in Foote, Sketches of Virginia, i, 316, and elsewhere.

[32] Semple, 16-17.

[33] Semple, 17, ff.

[34] Campbell, History of Virginia, 555.

arch-persecutor. In few counties have the Baptists been more numerous than in Chesterfield."[35]

On August 10, 1771, William Webber and John Waller arrived in Middlesex on a course of meetings. That night about nine o'clock, with two others, James Greenwood and Robert Ware, they were lodged in the jail, which swarmed with fleas. They preached the next day, Sunday, in jail; and preached every Wednesday and Sunday to crowds. On the 24th they were taken into court and ordered to give bond for good behavior and not to preach in the county again for one year. On refusing, they were remanded to prison and fed on only bread and water for four days. They were liberated, on giving bond for good behavior, after forty-six days of confinement.

In August, 1772, James Greenwood and William Lovel were preaching in King and Queen county. They were seized, put in jail, kept there for sixteen days, until Court convened, and then discharged on giving bond for good behavior. On March 13, 1774, "the day on which Piscataway Church was constituted," John Waller, John Shackleford and Robert Ware were imprisoned in Essex county, remaining in jail until Court day, March 21, when Ware and Shackleford gave bond for good behavior for twelve months. Waller refused, was imprisoned fourteen days longer, then gave bond, and went home.[36]

---

[35] Semple, writing in 1809 the history of the Middle District Association, says on this subject: "This makes five Baptist churches already mentioned in the county of Chesterfield. And most of them large and respectable. It is worthy of remark, that generally the Baptist cause has flourished most extensively where it met with most severe opposition in the offset. In Chesterfield jail seven preachers were confined for preaching, viz., William Webber, Joseph Anthony, Augustine Eastin, John Weatherford, John Tanner, Jeremiah Walker and David Tinsley. Some were whipped by individuals, several fined. They kept up their persecution after other counties had laid it aside. They have now in the county more than 500 in communion, among whom are four magistrates, two majors, and five captains." Semple, 207.

[36] Semple, 17.

About a month later, on the second Saturday in May, 1774, the Association met at Hall's in Halifax county. "Letters were received at the Association from preachers confined in prison, particularly from David Tinsley, then confined in Chesterfield jail. The hearts of the brethren were affected at their sufferings, in consequence of which it was agreed to raise contributions for them. The following resolution was also entered into: 'Agreed to set apart the second and third Saturday in June as public fast days in behalf of our poor blind persecutors, and for the releasement of our brethren.'"[37] The effect on the public mind of such fast days so ordered must have been great.

Other similar cases of imprisonment might be cited. Between 1768 and 1775 inclusive, there seem to have been about thirty-four imprisonments. "About thirty of the preachers," according to Leland, "were honored with a dungeon, and a few others besides. Some of them were imprisoned as often as four times, besides all the mobs and perils they went through. The dragon roared with hideous peals but was not *red*—the Beast appeared formidable, but was not *scarlet-colored*. Virginia soil has never been stained with vital blood for conscience sake."[38]

---

[37] Semple, 56. These radical Baptists did a very curious thing in their Association held in the autumn of this year, 1774. They appointed Samuel Harriss, for the Southern District, and John Waller and Elijah Craig, for the Northern District, "Apostles" to superintend the churches and report to the next Association. Semple gravely observes: "These Apostles made their report to the next Association rather in discouraging terms, and no others ever were appointed. The judicious reader will quickly discover that this is only the old plan of bishops, etc., under a new name. In the last decision it was agreed that the office of apostles, like that of prophets, was the effect of miraculous inspiration, and did not belong to ordinary times" (p. 59). Thus exit the Baptist "Apostles," but the Baptist Church made a narrow escape. The episode illustrates the immense power of the forms of institutions to persist and to compel imitation.

[38] Leland, Writings, 107. Rev. C. F. James, in his "Documentary History of the Struggle for Religious Liberty in Virginia" (see *Religious Herald*, Jan. 5, 1899, Richmond, Va.), has collected these

Dr. Hawks, the historian of the Episcopal Church, comments thus: "The ministers (says Leland) were imprisoned, and the disciples buffeted. This is but too true. No dissenters in Virginia experienced for a time harsher treatment than did the Baptists. They were beaten and imprisoned; and cruelty taxed its ingenuity to devise new modes of punishment and annoyance. The usual consequences followed; persecution made friends for its victims; and the men who were not permitted to speak in public, found willing auditors in the sympathizing crowds who gathered around the prisons to hear them preach from the grated windows." [39]

It is to be observed that these arrests were made on peace warrants. The Baptists contended that this was a subterfuge; that the real persecutor was the Established Church; that there was no law for their arrest; and that they had all the rights of Dissenters in England under the toleration act. A very significant comment upon this claim was made

---

names in a paragraph, as follows: "In December, 1770, William Webber and Joseph Anthony were imprisoned in Chesterfield jail, and in May, 1774, David Tinsley, Augustine Eastin, John Weatherford, John Tanner, and Jeremiah Walker were imprisoned in the same jail. In Middlesex county, William Webber, John Waller, James Greenwood, and Robert Ware were imprisoned in August, 1771. (Semple, pp. 17, 18.) In Caroline county, Lewis Craig, John Burrus, John Young, Edward Herndon, James Goodrich, and Bartholomew Chewning were imprisoned, but the year is not given. (See Taylor's Virginia Baptist Ministers, vol. i, pp. 81, 82.) In King and Queen county, James Greenwood and William Lovel were imprisoned in August, 1772, and John Waller, John Shackleford, Robert Ware, and Ivison Lewis in March, 1774. (See Semple, p. 22.) Dr. Taylor, in his sketch of Elijah Craig, says he was imprisoned in Orange county, but does not give the year. According to Taylor's Virginia Baptist Ministers, there were confined in Culpeper jail, at different times, James Ireland, John Corbeley, Elijah Craig, Thomas Ammon, Adam Banks and Thomas Maxfield."

Dr. G. S. Bailey says "The father of Henry Clay was thus imprisoned, as a Baptist minister, in Virginia, as I was informed by Rev. Porter Clay, a brother of Henry Clay." Cf. "Trials and Victories of Religious Liberty in America," p. 40.

[39] Hawks, Protestant Episcopal Church in Virginia, p. 121.

by the House of Delegates in its action in 1778. On November 14 of that year, a petition of Jeremiah Walker, one of the most prominent of the Baptist preachers and at that time in good standing with his people, was presented praying for the reconsideration of "his being taxed with prison charges" for the time he was in jail in Chesterfield county in 1773 and 1774 "for preaching." The petition was referred to the Committee for Religion. On November 20, the Committee brought in a resolution, That the petition of Jeremiah Walker for refunding the value of prison fees levied on him for the time "whilst confined in the jail of Chesterfield county for a breach of the peace," be rejected. The resolution was read, amended, agreed to, and the petition rejected, the House endorsing the view that Walker's offence had been a breach of the peace.[40] This action was taken in the midst of the Revolution when all the help of all the Baptists was needed.

It is to be observed, also, that these persecutions took place chiefly in the older counties, that is, in the counties lying along the great rivers of tidewater Virginia and in the northeastern part of the colony. This is just the country and the society that bred the men who led the Revolution, and we remember that among the staunchest patriots were some who at first were strong for the mother country and for the Mother Church. This is the section of country also in which were found the most worthless as well as some of the best of the ministers of the Established Church. There was, accordingly, a sharp clash of ecclesiastical interests as well as of theological opinions in these parishes. A review of the course of these events, however, renders it exceedingly doubtful if, as a class, the ministers themselves of the Established Church took an active part in the persecutions, though the Baptists believed so.[41] But the

[40] Journal of House of Delegates, November 14 and 20, 1778.

[41] Semple, 119, cites the friendly offer of a clergyman of one of the parishes in Caroline to be security for Waller and Craig while in Fredericksburg jail, if they wished to give bond.

Church Establishment, as an institution bound up with the political organization of Virginia society, was largely responsible for them.

Along the mountain border there were but few instances of persecution after the first year or two, and almost none in what were then the southwestern counties, nor any south of James River as a whole, Chesterfield county excepted.

Under such conditions of mind of the Virginia public and of the Baptists themselves, let us see what was the progress made by them, and the causes as well as the results of their growth.

The year 1770 may be taken as the starting point for this examination. In that year, the Separate Baptists of Virginia, North Carolina and South Carolina, after about ten or twelve years[42] of joint association meeting, decided to divide and to hold thenceforward their associations in their respective colonies.[43] ". . . At the commencement of the year 1770," says Semple, "there were but two [three][44] Separate churches in all Virginia north of James river; and we may add, there were not more than about four on the south side."[45] In addition to these, in 1770, as we have already seen, there was one church in southeastern Virginia, and the Regular Baptists had ten churches, chiefly in the northeastern part of the colony.

This year, 1770, furnishes also the first petition from the Baptists to the Colonial Legislature for religious relief. The Journal of the House of Burgesses for May 26, 1770, contains "A petition of several persons, being Protestant dissenters of the Baptist persuasion, whose names are thereunto subscribed, was presented to the House and read, setting forth the inconveniences of compelling their licensed preachers to bear arms under the militia law and to attend musters, by which they are unable to perform the duties

[42] Backus, History of Baptists of N. E., iii, 274; Bitting, Strawberry Assn., 9, note.

[43] Semple, 47. [44] Compare Semple, pp. 11 and 25. [45] Semple, 25.

of their function, and further setting forth the hardships they suffer from the prohibition to their ministers to preach in meeting-houses, not particularly mentioned in their licenses; and, therefore, praying the House to take their grievances into consideration, and to grant them relief."

This petition evidently came from the Regular Baptists, whose ministers were regularly licensed, as was not the case ordinarily, if ever, with the Separate Baptists at this time.

The petition was referred to the "Committee for Religion," which reported in a few days, June 1, "*Resolved*, That it is the opinion of this committee that so much of the said petition as prays that the ministers or preachers of the Baptist persuasion may not be compelled to bear arms or attend musters, be rejected."

The resolution was adopted by the House.[46]

The first session of the Virginia Separate Baptist Association was held at Craig's Meeting-house in Orange county in May, 1771. Delegates from fourteen churches were present, representing thirteen hundred and eighty-five members.[47] It is not known what was done at the meeting in 1772. At the session held in 1773, a division of the association was made into two districts, one north and one south of James River.[48] Now the years from 1768 to 1774 inclusive were the time of the greatest persecution of the Baptists in Virginia. How little it availed is shown by the records of these District Association meetings. In 1774 the Northern District met at Carter's Run in Fauquier county in May, and letters were received from *twenty-four* churches reporting a membership of 1921; the Southern District held its second session at Walker's Meeting-house in Amelia county in October, and letters were received from *thirty* churches reporting a membership of 2083, a total of over four thousand members. This total does not include

[46] Journal, House of Burgesses, May 26, June 1, 1770.
[47] Semple, 49; Bitting, Strawberry Assn., 12, says twelve churches.
[48] Ibid., 55 ff.

the membership of any Separate churches not sending delegates to these two meetings; nor does it include the four churches in southeastern Virginia—three new since 1770, two in Sussex and one in Isle of Wight,[49] with a membership of over 150; nor does it include the fourteen churches of the Regular Baptists—four new since 1770, two in Fauquier, one in Frederick, one in the Redstone Settlement (Great Bethel, Monongalia county, Virginia)[50] with a membership of about 800. Making these additions, we get approximately five thousand as the number of Baptist church members in Virginia in the fall of 1774. Such a growth is astonishing: from eighteen or nineteen churches, with something like eight hundred and fifty members in 1770, to *seventy-two* churches, with a membership of over five thousand in the fall of 1774, less than five years.[51]

The causes of such popular religious movements it is not easy to ascertain and to state precisely. As we read this story, we are reminded of the Puritan movement in England; of the Wicklifites in the fourteenth century; even of the Barefoot Friars of the thirteenth century. The resemblance is a general one. More particularly, in the case of the Virginia Baptists, we doubtless see an outgrowth of that same principle of Protestant evolution which, beginning formally with the Reformation, culminated in the latter half of the eighteenth and the early part of the nineteenth centuries in the immense development of the Methodists. This is the principle of direct personal communion with God, of independent soul-experience. Its last great impulse in England and America came with the preaching of the Wesleys and Whitefield. As "The Great Awakening,"[52] it made for

---

[49] Semple, 343. [50] Fristoe, 9.

[51] I am unable to say whether any, and if so how many, of these members were negroes; possibly a few. The impression left by the works of Leland, Semple, Benedict, and others is, I think, that the negroes did not begin to come into the churches until somewhat later, unless in very small numbers.

[52] Tracy, The Great Awakening.

itself a distinctive name in America, and called forth the zeal of "New Lights" and "Old Lights" in both continents. The development of this principle is the third broadly distinctive phase of the evolution of Christianity, the first phase being dogmatic, the second that of the great institutional church.[53]

---

[53] Bryce, Holy Roman Empire, 325 ff.

". . . but (the Reformation) was also something more profound and fraught with mightier consequences than any of them. It was in its essence the assertion of the principle of individuality—that is to say, of true spiritual freedom. Hitherto the personal consciousness had been a faint and broken reflection of the universal, obedience had been held the first of religious duties; truth had been conceived as a something external and positive, which the priesthood who were its stewards were to communicate to the passive layman, and whose saving virtue lay not in its being felt and known by him to be truth, but in a purely formal and unreasoning acceptance. . . . The universal consciousness became the Visible Church: the Visible Church hardened into a government and degenerated into a hierarchy. . . . All this system of doctrine . . . was suddenly rent in pieces by the convulsion of the Reformation, and flung away by the more religious and more progressive peoples of Europe. That which was external and concrete was in all things to be superseded by that which was inward and spiritual.

It was proclaimed that the individual spirit, while it continued to mirror itself in the world-spirit, had nevertheless an independent existence as a centre of self-issuing force, and was to be in all things active rather than passive. Truth was no longer to be truth to the soul until it should have been by the soul recognized and in some measure even created; but when so recognized and felt, it is able under the form of faith to transcend outward works and to transform the dogmas of the understanding; it becomes the living principle within each man's breast, infinite itself, and expressing itself infinitely through his thoughts and acts. He who as a spiritual being was delivered from the priest, and brought into direct relation with the Divinity, needed not, as heretofore, to be enrolled a member of a visible congregation of his fellows, that he might live a pure and useful life among them. Thus by the Reformation the Visible Church as well as the priesthood lost that paramount importance which had hitherto belonged to it, and sank from being the depositary of all religious tradition, the source and centre of religious life, the arbiter of eternal happiness or misery, into a mere association of Christian men, for the expression of mutual sympathy and the better attainment of certain common ends."

To that part of the Virginia people who then became Baptists, this vitalizing principle of religious life did not seem to be in the Established Church, which neglected them; nor among the Quakers, who had long since covered it over with the veil of that rigid informal formality which still parts them from their fellow-citizens; nor in Presbyterianism, with its intellectual demands of an elaborate creed. These people needed a distinctive symbol and a comparatively formless faith; they found the one in adult baptism by immersion, and the other in the wide compass of Bible teaching, wherein the devout and emotional soul finds what it seeks. Among them, accordingly, as Leland tells us, some "held to predestination, others to universal provision; some adhered to a confession of faith, others would have none but the Bible; some practised laying on of hands, others did not."[54] They agreed among themselves to disagree; and they held together in their churches.

Another cause of the rapid spread of Baptist doctrine and association was social.[55] The Established Church was the rich man's church unworthily administered; the Quakers were exclusive. The plain, ignorant people would none of either of these, for their wants were not satisfied by them. They wanted an organization, a ministry, a preaching, responsive to their own manner of thought and to their

---

The Rev. Dr. S. D. McConnell, of Holy Trinity Church, Brooklyn, read some years ago before the Contemporary Society of Philadelphia a valuable paper on "The Next Phase of Christianity," in which he maintained that the next or fourth phase of Christianity was the practical one of the religion of conduct, as distinguished from dogmatism, institutionalism, and personal religion.

[54] Leland quoted by Hawks, Protestant Episcopal Church in Virginia, 122.

[55] Tidewater Virginia, we must remember, was emphatically Cavalier Virginia.

"The great Cavalier exodus began with the King's execution in 1649, and probably slackened after 1660. It must have been a chief cause of the remarkable increase of the white population of Virginia from 15,000 in 1649 to 38,000 in 1670." Fiske, ii, 16.

emotions. The Baptist organization supplied the demands of their thought and their emotion, and on a plane congenial to their habit of speech and of life. Now, social classes were sharply defined in Virginia in 1770, and the assertion by unlettered men of the right to think for themselves and to lead others was first ridiculed and then resented. After due allowance has been made for civil alarm and ecclesiastical jealousy, it seems certain that there was, during those early years and down into the practical beginnings of the Revolution, say in 1774-1775, a strong current of social antagonism setting against the Baptists, and, of course, a corresponding feeling on the part of the Baptists for those hostile to them. Fristoe says, speaking of the years prior to 1774: "The cant word was they are an ignorant, illiterate set—and of the poor and contemptible class of the people."[56] Born about 1748 in Stafford county, converted very early in life, preaching at nineteen, chosen moderator of his Association at twenty-six, Fristoe had lived through the struggle and seen its successful issue when, at sixty years of age, he published his book in 1808. The Rev. John Waller, so noted afterwards as a Baptist preacher, illustrates both phases of the situation; for as wild, "Swearing Jack Waller," the dissolute member of a well-known family, he was one of the Grand Jury that presented Lewis Craig for disturbing the peace by his preaching. Leland, probably the ablest man in the Baptist ministry in Virginia during the Revolution, comments with ill-concealed contempt in his "Virginia Chronicle" (p. 117), on the cropped heads of the Baptist men and the plain dress of the women; and Semple, speaking of Leland's call to the pastorate of Mount Poney Church in 1777, says: "The habits of the Baptists in New England and of those in Virginia respecting apparel were also much at variance. Mr. Leland and others adhered to the customs of New England, each one putting on such apparel as suited his own fancy. This was

[56] Fristoe, History of Ketocton Association, 64.

offensive to some members of the Church. The contention on this account became so sharp that on the twenty-fifth of July, 1779, about twelve members dissented from the majority of the Church, and were of course excluded." [57]

The first attempts (1768-1769) to bring together the Regulars and the Separates were defeated by this matter of dress apparently. "Among the Separates, the objections raised by a few popular characters prevailed. They, it seems, thought the Regulars were not sufficiently particular in small matters, such as dress, etc." [58] So, too, in 1773, Elijah Craig and David Thomson, delegates from the General Association of Virginia to the Kehukee Association (August, 1773) in Halifax county, North Carolina, stated among objections "to a communion with them. . . . Secondly, they were, as they alleged, too superfluous in their dress; contending that excessive dress ought to be made a matter of church discipline." [59] This reads like a chapter from Puritan England. Contrast it with what Semple says of the Baptists twenty years later, in 1792: "They were much more numerous and, of course, in the eyes of the world, more respectable. Besides, they were joined by persons of much greater weight in civil society. . . . This could not but influence their manners and spirit more or less. Accordingly, a great deal of that simplicity and plainness, that rigid scrupulosity about little matters, which so happily tends to keep us at a distance from greater follies, was laid aside." [60]

Evidently we are dealing with a social upheaval as well as with a religious and political revolution. As this became plainer to the contemporary generation, more and more members of the well-to-do and intelligent classes began to join the Baptists, so that with the opening of the Revolution the attitude of the denomination before the public was already changed. The "cant word" that so vexed Fristoe was no longer true in the manner and to the ex-

[57] Semple, 177-178. [58] Semple, 45-46. [59] Ibid., 349. [60] Semple, 39.

tent that it had been. This change continued increasingly during the course of the war and left the Baptists at its close, as Semple says, "in the eyes of the world more respectable."

The economic cause was also at work; had been at work for years. That had been the mainspring in bringing about the victory in the famous "Parsons' Cause" in 1763, when all the laity of Virginia stood together as against the Establishment. The irritation from that old burden was intensified by the new theological antagonism. "To pay taxes," they said within themselves, "to a set of lazy parsons was hard to bear when a man was still in the bonds of iniquity; but for a man who had learned to dwell within the gates of Zion to pay taxes to this bastard brood of the Scarlet Woman, was abominable. The servants of the Lord who daily went in and out before them, ministering to their spiritual wants, received no worldly reward save as free-will offering;[61] and yet they must feed fat these ravening wolves in sheep's clothing. It was intolerable."

It is perhaps not too much to say that the Virginia Baptists of 1774 deserve credit for not breaking out into the excesses of mob violence.

---

[61] The Separate Baptists at first disapproved sternly of their ministers receiving any salary. This was the natural result of their religious enthusiasm and of their hostility to the salaried clergy. Its inconveniences were soon felt. Taylor repeats a pathetic story (taken from "The Baptist," Tenn., R. B. C. Howell, Editor), which "if not true is well found," of the pitiful condition to which a young farmer-preacher's zeal had reduced his family. They were found in a state of destitution by the famous Samuel Harriss, the very man who had denounced hireling ministers and who was responsible for this young preacher's conduct, but who now saw the error of his former opinion. J. B. Taylor, Virginia Baptist Ministers, 1st Series, 37.

"The Maintenance of the Ministry.

As gospel ministers should not, if it can be helped, entangle themselves with the affairs of their life, but spend all their time in watching over and providing food for the flocks committed to their care, so it is most reasonable, that they should be supported as to temporal things, by those who enjoy their labors." Thomas, The Virginian Baptist, 25.

This Regular view is in sharp contrast to the early Separate view.

In fact, this economic cause had a hundred years before been largely instrumental in bringing about Bacon's Rebellion, of which the Baptist uprising against the Establishment during the Revolutionary period may be regarded as the final outcome. The law of March, 1662,[62] which changed the Vestry from an elective body to a self-perpetuating close corporation in the hands of the landowners, was abrogated by Bacon's Assembly in 1676, was revived by the next Assembly in 1677, and was the object of prolonged and successful attack by the Dissenters during the Revolution. This is not surprising when we remember that the Vestry "apportioned the taxes, elected the churchwardens, who were in many places the tax-collectors, 'processioned' the bounds of lands, thus affecting the record of land-titles, supervised the counting of tobacco, and presented the minister for induction."[63]

The Vestry therefore touched the sensitive pocket nerve on all sides, and was correspondingly detested by those who had no share in its selection or its deliberations, and who had come to differ from its members in religious opinion. As we shall see, the economic struggle against what had been the Established Church continued long after religious freedom had been attained.

A fourth cause, more powerful than any one of those mentioned, as taking them all, in part, up into itself, was political. Liberty was getting to be in the air—liberty, the heritage of his race, all the dearer to the poor man in that he was poor. And yet he had to submit to be married, to have his father buried, to have his child baptized by the minister, often scandalously unfit, of a lordly church which forced from him his hated tithes, and whose clergy were even now (April-June, 1771) trying to make it more aristocratic by the institution of an American Bishopric. Now the

---

[62] Hening, ii, 44-45.

[63] For an interesting discussion of this subject in connection with Bacon's Rebellion, cf. Fiske, Old Virginia, ii, 96 ff.

Baptist organization is the most democratic[64] of the great Protestant bodies. Each church is a little republic in which each member has his rights and may maintain them among his fellows. Such a system appealed powerfully to the political instincts of the Virginian of those days, as was proved by the sympathy for and with the Baptists shown by Henry, Jefferson, Madison, and other representative men.[65]

Thus urged by their religious, social, economic, and political likes and dislikes, the plain people of Virginia flocked into the Baptist Church and were only exasperated, not hindered, by the persecution to which their leaders were subjected.

The greatest gains made during this short period were

---

[64] "*The government of the Baptist Church.*—. . . Being a distinct body, or corporation, it is entrusted with the whole prerogative of judicature respecting itself. . . . (1) We have particular meetings appointed . . . every member is to attend. . . . (2) We allow none to be present but our own members. . . . (3) At these meetings we meddle not with any state affairs. No; we leave such things to the Commonwealth to which alone they belong. We concern not ourselves with the government of the colony; nor any point relating to it; unless it be to pray for both the temporal and eternal welfare of all the inhabitants. We form no intrigues. We lay no schemes to advance ourselves, nor make any attempts to alter the constitution of the Kingdom to which we belong. . . . (4) At these meetings we consider and adjust all matters relating to the peace, order and edification of the Church. . . . We enquire into the conduct of our members, . . . acquit the innocent, receive the penitent, and pass judgment upon all irreclaimable offenders . . . and the incorrigible . . . are excommunicated." Thomas, The Virginian Baptist, 31-33.

This was doubtless a perfectly sincere statement when Thomas wrote it in 1773. But compare it with what Semple says about petitions to overturn the Church Establishment towards the close of 1774,[a] and with the proposal of the Committee of the Regular Baptists in 1780 to the General Association as to national grievances,[b] and with the whole history of the General Committee.[c] Times change, and we change with them.

[65] Curry, J. L. M., Establishment and Disestablishment, 94. "The fact is incontestable, that religious and political ameliorations are contemporaneous, and have been accomplished by the same persons."

---

[a] See p. 27 ff. [b] See p. 52. [c] See pp. 54-69.

in those parts of Virginia, the oldest and most thickly settled, in which the Established Church had been longest given its opportunity of doing good: In tidewater and lower Virginia—in James City county (first home of Englishmen in Virginia), in King and Queen, Middlesex, Essex, Caroline, Goochland, Louisa, Spottsylvania,* Stafford;* over the Blue Ridge—in Frederick,* Berkeley,* Shenandoah,* Rockingham;* back in Piedmont Virginia, along the eastern slopes of the Blue Ridge—in Loudoun,* Fauquier,* Culpeper, Madison, Orange,* Albemarle, Fluvanna, Amherst; across the James River in Southside Virginia—in Buckingham, Prince Edward, Charlotte, Bedford, Franklin; on the North Carolina border—in Henry, Pittsylvania,* Halifax,* Mecklenburg; thence northerly and easterly—in Lunenburg, Nottoway,* Amelia, Powhatan, Chesterfield, Dinwiddie, Sussex, Isle of Wight, and so to Princess Anne* and the Atlantic Ocean. In thirteen (those marked with the asterisk) of these thirty-nine counties, possibly in more, the Baptists had effected some sort of lodgment before 1770, in these they increased their numbers. In the remaining twenty-six counties they established churches for the first time after 1770 (as far as I can ascertain), though itinerant preachers went through many, perhaps all, of these counties also at an earlier date, making many converts as they went.[66]

However that may be, the Baptists constituted in 1774 a large body of the people inspired by a new-born zeal, animated by an almost fierce spirit of proselytism, organized into vigorous and widely distributed branches with centralized organ of common action, and held together by a common resistance and hatred of their spiritual oppressor the Established Church.

These people were formidable in numbers, though it is hard to determine just how numerous they were. Benedict,

[66] The names of the counties are given as they stand in Semple (in 1809-10). Many of these counties were not laid off in 1774 (see map).

writing in 1813, after prolonged travels among his co-religionists, says: "From the many observations I have made on the spread of Baptist principles, I am inclined to think, that without counting that class in Massachusetts and Connecticut, who hang to the denomination merely by certificates, we may reckon seven adherents to one communicant."[67] According to this estimate, the five thousand Virginia Baptist members in 1774 would find themselves supported by an army of thirty-five thousand sympathizers in a total population of probably 400,000 free inhabitants—about one in every ten. That estimate seems high. But taking two-thirds or even one-half of this number as a correct estimate,[68] we can easily understand the politico-relig-

[67] David Benedict, A General History of the Baptist Denomination, Boston, 1813, vol. ii, p. 553.

[68] Note on Population of Virginia and Number of Baptists. It is not possible to do more than approximate the number of people in Virginia at this time. The "Virginia Almanac" for 1776 gives (p. 2) "An estimate of the number of souls in the following provinces, made in Congress, September, 1774:

In Massachusetts	400,000
New Hampshire	150,000
Rhode Island	59,678
Connecticut	192,000
New York	250,000
New Jersey	130,000
Pennsylvania	350,000
Maryland	320,000
Virginia	650,000
North Carolina	300,000
South Carolina	225,000
Total	3,026,678

Leland says in his *Virginia Baptist Chronicle*, which was published in Virginia in 1790, "Mr. Jefferson says, that in 1782, there were in this State 567,614 inhabitants, of every age, sex and condition. Of which 296,852 were free, and 270,762 were slaves. . . . Mr. Randolph, in 1788, stated the round numbers . . . (at) 588,000. These gentlemen had both official accounts being both governors of Virginia, but the returns from the counties are imperfect, and from some counties no returns at all are made to the executive." The census report of 1790 gives the number for Virginia as: free whites, 442,117; other free persons, 12,863; slaves, 292,627; total,

ious agitation that now began. "So favorable did their prospects appear," says Semple, "that towards the close of the year 1774, they began to entertain serious hopes, not

747,610. The population would be likely to decrease during the Revolutionary War because of the war, and still more, both during and after the war, because of the rapid emigration to Kentucky.

The number of Baptists likewise can only be approximated. Leland says: "There were a few Baptists in Virginia before the year 1760, but they did not spread so as to be taken notice of by the people, much less by the rulers, till after that date."

The churches increased in number from eighteen in 1770 to about ninety in 1776, and it seems altogether probable that the number of members was not far from as large then as it was for some years afterwards, owing to the constant emigration to Kentucky.

In 1790, Leland says there were "1 General Committee; 11 associations; 202 churches; 150 ministers; 20,000 members."[a]

Rippon's *Baptist Register*, under the heading "A View of the Baptist Associations, etc., in the United States of America and Vermont for October, 1790" (p. 72), gives the following table of Associations and the comment thereon:

	Ministers	Churches	Members
Ketocton*	10	12	650
Chappawamsic*	7	14	850
Orange District*	22	32	4600
Dover District*	36	26	5100
Lower District and Kehukee*	45	51	5500
Middle District*	24	25	2000
Roanoke and North Carolina*	18	18	2200
S. Kentucky*	15	14	1200
N. Kentucky	10	12	1100
Ohio	4	5	300

The nine associations in the above list marked with asterisks meet in a General Committee by their representatives at Richmond in the month of May annually. Due allowance being made for North Carolina, North Kentucky and Ohio in this list, the results conform fairly to the estimate of Leland.

Semple says: "Asplund's Register for 1791, soon after the great revival, makes the number of Baptists 20,439 in Virginia."[b]

Benedict, after prolonged travel and consideration of the subject, thinks (1860) that "in 1800 there were only about 80,000 Baptists in North America and about 20,000 in Virginia."[c]

A more recent authority still, Armitage (1887), concludes that "as nearly as we can get at the figures, there were but 97 Baptist

[a] Leland, Writings, 117.

[b] Semple, 446.

[c] Benedict, Fifty Years among Baptists.

only of obtaining liberty of conscience, but of actually overturning the Church establishment, from whence all their oppressions had arisen. Petitions for this purpose were

churches in all the colonies in 1770. . . . in 1784 our total membership in the thirteen colonies was only about 35,000"; [a] and that: "We find that while the first Church was planted in that Colony (Virginia) in 1714, in 1793 there were in the State 227 churches, 272 ministers, 22,793 communicants, and 14 associations." [b]

Semple closes his estimate of the number—thirty-one thousand and fifty-two—of Baptists in Virginia at the time of his writing (1809), by saying: "The increase in nineteen years (since 1790) is more than fifty per cent. During this period it has been supposed that over one-fourth of the Baptists of Virginia have moved to Kentucky and other parts of the western country." [c] And Semple remarks elsewhere: "It is questionable with some whether half of the Baptist preachers who have been raised in Virginia have not emigrated to the western country." [d] This emigration westward is the subject of constant remark by the Baptist writers of the times. Lewis Craig went to Kentucky in 1781. "In removing from Virginia," says Taylor, "he had taken with him most of the members of the Upper Spottsylvania, since called Craig's church. This was the oldest and most flourishing body of baptized believers between James and Rappahannock rivers. . . . The pastor and flock, numbering about two hundred members, and called by John Taylor 'the travelling church,' commenced their long toilsome journey. The whole, embracing children and servants, numbered nearly four hundred." [e] Rev. Lewis Lunsford, in a letter under date of March 11, 1793, written after his return from Kentucky, says: "The emigration to that country is incredible." [f]

In view of the number of churches in 1776, in view also of the estimates cited and of the continuous emigration to Kentucky, it seems probable that there were at the end of 1775 something like 10,000 Baptist members in Virginia, and that the number rapidly rose to about 20,000 and remained near those figures till the end of the century. This is a mere guess, however. The estimate as to churches is likewise a guess. It is based on Semple's tables, which in turn are based on Asplund's Register, in part, on Fristoe's History, and on the Association records. But Semple gives names not found in Fristoe for the corresponding period, and he omits

[a] Thos. Armitage, History of the Baptists, N. Y., 1887, p. 776.
[b] Thos. Armitage, History of Baptists, 735.
[c] Semple, 446.
[d] Semple, 172.
[e] J. B. Taylor, Virginia Baptist Ministers, First Series, 3d ed., N. Y., 1860, 89.
[f] Taylor, ibid., 142.

accordingly drawn and circulated with great industry. Vast numbers, readily, and indeed, eagerly, subscribed to them."[69] Thenceforward, the Baptists pursued the Church Establishment with a vindictive hatred that is repellent, however natural it may have been, and however glad we may be that the Establishment was finally destroyed.

The cause of this hatred has already been stated in part. We have seen that a strong social element was one of the formative influences of the Baptist organization at this particular time. That it is easy for the upper class of society to misunderstand and despise those below, and for the lower class to hate those above, has been abundantly shown in history before and since the French Revolution.[70] At this early time very few of the Baptists belonged to the aristocratic, office-holding class which filled the county courts, which furnished the members of the parish vestries, and which, therefore, levied taxes upon these, their poor neighbors, for the support of an official church grossly neglectful of its sacred duties. This class feeling was increased by the Established clergy, themselves members of the upper class in virtue of their position and in so many cases unworthy of either class or position.

What Semple says on this subject is but the common testimony of the times: "The great success and rapid increase of the Baptists in Virginia, must be ascribed primarily to the power of God working with them. Yet it cannot be

---

names found in Fristoe. The absence of the date of foundation of so many churches in his tables renders the matter still more confused and confusing; and finally he himself complains despairingly, "Churches used so often to change their names that it is now really difficult to identify an old church." To this may be added, that churches seemed to be abandoned and to be revived in a manner beyond the calculus of probabilities. An approximation seems to be as near as we can come to the fact; but the fact was very substantial.

[69] Semple, 25.

[70] Let whoever would better understand this social class attitude of the middle of the XVIII Century read—and read between the lines—Fielding's "Tom Jones," as well as "The Spectator," and Goldsmith.

denied but that there were subordinate and cooperating causes; one of which, and the main one, was the loose and immoral deportment of the established clergy, by which the people were left almost destitute of even the shadow of true religion. 'Tis true, they had some outward forms of worship, but the essential principles of Christianity were not only not understood among them, but by many, never heard of. Some of the cardinal precepts of morality were disregarded, and actions plainly forbidden by the New Testament were often proclaimed by the clergy harmless and innocent, or at least foibles of but little account. Having no discipline, every man followed the bent of his own inclination. It was not uncommon for the rectors of parishes to be men of the loosest morals. The Baptist preachers were in almost every respect the reverse of the Established clergy. The Baptist preachers were without learning, without patronage, generally very poor, very plain in their dress, unrefined in their manners, and awkward in their address; all of which, by their enterprising zeal and unwearied perseverance, they either turned to advantage or prevented their ill effects. On the other hand, most of the ministers of the Establishment were men of classical and scientific education, patronized by men in power, connected with great families, supported by competent salaries, and put into office by the strong arm of civil power. Thus pampered and secure, the men of this order were rolling on the bed of luxury when the others began their extraordinary career. Their learning, riches, power, etc., seemed only to hasten their overthrow by producing an unguarded heedlessness, which is so often the prelude to calamity and downfall." [71]

---

[71] Semple, 25-26. Leland had already twenty years before Semple made substantially the same statement as to Baptist preachers. He speaks of "the rarity of mechanics and planters preaching such strange things," and adds in a note, "To this day (1790) there are not more than three or four Baptist ministers in Virginia, who have received the *diploma* of M. A., which is additional proof

The plain, everyday people, then, were not only irritated by social distinctions and wounded in the sensitive pocket nerve by burdensome church taxes, but they were shocked and disgusted by clerical immorality. Nor was this all. They saw their fellows and neighbors arrested and thrust like common malefactors into the county jails for the alleged crime of preaching the Gospel of peace, free to all men without tithe and without trammel of priestly contrivance. Looking at it in this way, they did well to be angry.

These illustrations of the Baptist propaganda and persecution and of their consequences have been thus fully set forth in order to show the passionate feeling of the Baptists themselves and the sympathy for them in the community at large in the latter part of 1774. This state of the public feeling led up to the resolution reached by the Baptists to make a direct attack on the Establishment as soon as possible. In 1773 an attempt to overthrow the Established Church would have been foolish and futile; in 1774 petitions to that end were subscribed to, Semple tells us, by "vast numbers readily and indeed eagerly."

It is well at this point, by way of review, to state briefly the relations of the Baptists and the legislature up to the middle of the year 1774. There do not appear to have been any petitions during 1771. Early in 1772, on Feb-

---

that the work has been of God, and not of man" (Writings, 105, and note, ibid.). Rev. R. B. C. Howell, in "Early Baptists in Virginia," an address delivered in 1856, nearly fifty years after Semple wrote, and nearly seventy years after Leland's "Virginia Chronicle," flatly contradicts the testimony of both these notable men as to this matter. What his authority is for so doing I know not; he gives none. See Publications of American Baptist Historical Society, 1857, p. 105 ff. Benedict says of these preachers: "A portion of the men under consideration possessed in a high degree the powers of imagination and invention to which many modern preachers of literary training can make but small pretensions. . . . Figures and metaphors were their favorite themes, and, by some means or others, they would make all things about them plain. As for parables, they would never leave one till they had made it go on all-fours."

Benedict, Fifty Years, 96.

ruary 12, the Journal of the Burgesses shows that "A petition of several persons of the county of Lunenburg, whose names are thereunto subscribed, was presented to the House and read; setting forth, that the petitioners, being of the society of Christians called Baptists, find themselves restricted in the exercise of their religion, their teachers imprisoned under various pretences, and the benefits of the Toleration Act denied them, although they are willing to conform to the true spirit of that act, and are loyal and quiet subjects; and therefore, praying that they may be treated with the same kind indulgence, in religious matters, as Quakers, Presbyterians, and other Protestant dissenters enjoy." [72]

Identical petitions are presented from Mecklenburg county on February 22, and from Sussex on February 24; and on this same day (Feb. 24) a like petition from Amelia county adds that "If the Act of Toleration does not extend to this colony, they are exposed to severe persecution; and if it does extend hither, and the power of granting licenses to teachers be lodged, as is supposed, in the General Court alone, the petitioners must suffer considerable inconveniences, not only because that Court sits not oftener than twice in the year, and then at a place far remote, but because the said Court will admit a single meeting-house, and no more, in one county, and that the petitioners are loyal and quiet subjects, whose tenets in no wise affect the state; and therefore praying a redress of their grievances, and that Liberty of Conscience may be secured to them." [73]

On February 25, the Committee for Religion reported that those petitions were reasonable and was ordered to bring in a bill in accordance therewith. On the 27th of

---

[72] Journal, House of Burgesses, Feb. 12, 1772.

[73] Journal of Ho. of Burgesses, Fristoe, 73, says: "I knew the General Court to refuse a license for a Baptist meeting-house in the county of Richmond, because there was a Presbyterian meeting-house already in the county, although the act of Toleration considered them distinct societies."

February this bill was reported, read a second time, and committed to the Committee for Religion.[74]

Another similar petition was presented from Caroline county on March 14, and was laid on the table.

On March 17, "Mr. Treasurer reported from Committee for Religion, to whom the bill for extending the benefit of the several Acts of Toleration to His Majesty's Protestant subjects in this Colony, dissenting from the Church of England, was committed."[75] The bill was ordered to be engrossed and to be "read the third time upon the first day of July next." But the House was prorogued on April 11, "to the 25th day of June next." The Journal shows no further entries until March 4, 1773. The house was prorogued again, March 13, by Lord Dunmore, and did not meet until May 5, 1774.

This Toleration Bill, proposed in February, 1772, was opposed by Baptists and by other dissenters as the next petition shows.

The year 1774 was a year of committees and correspondence, of petitions and expectation. The Virginia Committee of Correspondence was busily at work. The Virginia Burgesses had recommended the annual Congress of the Colonies, and its first meeting took place in September of this year in Philadelphia. Men's minds were excited in anticipation of coming change. Events were moving rapidly. The Baptists begun their general forward movement in the spring. At first it was defensive as before; it soon became offensive. It began with a petition for the improvement of their condition.

On May 12, 1774, "A petition of sundry persons of the community of Christians called Baptists, and other Protestant dissenters, whose names are thereunto subscribed, was presented to the House and read, setting forth that the toleration proposed by the bill, ordered at the last session of the General Assembly to be printed and published, not

[74] Cf. Journal of Burgesses. [75] Ibid.

admitting public worship, except in the daytime, is inconsistent with the laws of England, as well as the practice and usage of the primitive churches, and even of the English Church itself; that the night season may sometimes be better spared by the petitioners from the necessary duties of their callings; and that they wish for no indulgences which may disturb the peace of Government; and therefore praying the House to take their case into consideration, and to grant them suitable redress." [76]

The House does not seem to have taken any action on the matter beyond referring it to the Committee for Religion. The petitioners, it is seen, were men busy at work during the daytime. This petition appears to be the joint work of individuals, Baptists and others. Perhaps it was shrewdly intended to accompany or precede the next petition noticed by the Assembly.

Four days later, on May 16, 1774, the House of Burgesses

"*Ordered*, that the Committee of Propositions and Grievances be discharged from proceeding upon the petition of sundry Baptist ministers, from different parts of this country, convened together in Loudon county at their Annual Association, which came certified to this Assembly, praying that an Act of Toleration may be made, giving the Petitioners and other Protestant dissenting Ministers, Liberty to preach in all proper Places, and at all Seasons, without Restraint. *Ordered*, that said Petition be referred to the consideration of the Committee for Religion; and that they do examine the Matter thereof, and report the same, with their Opinion thereon, to the House." [77]

This is an official petition from the Baptist representative body. It may have come from the Ketocton Association of the Regular Baptists held at Brent Town in 1774, although Brent Town was in Fauquier. The Separate

[76] Journal of House of Burgesses, May 12, 1774; also Meade, ii, 439.

[77] Journal of Burgesses, May 16, 1774.

Association for the Northern District was not held until the fourth Saturday in May, 1774, at Picket's Meeting-House in Fauquier county. The Separate Association for the Southern District [78] met on the second Saturday in May, as we have already seen,[79] and passed a resolution appointing fast days; but nothing is said of any petition to the Assembly.

It is a noteworthy conjunction of circumstances that on this same day, May 16, the Burgesses "*Ordered*, that Mr. Washington, Mr. Gray, Mr. Munford and Mr. Syme be added to the Committee for Religion." On the next day, May 17, Mr. Andrew Lewis, Mr. Macdowell and Mr. James Taylor were added to the same Committee. Jefferson had been added on May 9.

The Assembly was dissolved by Dunmore on May 26, and no legislative action was taken during the rest of the year.

With the advent of 1775, the political current began to run so strongly that all other interests were swept along with it. The Baptists, both from principle and from interest, were thorough republicans and ardent supporters of the revolutionary party. Speaking of it from the religious point of view, Semple says: "This was a very favorable season for the Baptists. Having been much ground under the British laws, or at least by the interpretation of them in Virginia, they were to a man favourable to any revolution by which they could obtain freedom of religion."[80] And Armitage, looking back across a hundred years at the situation, says: " . . . the Baptists demanded both (civil and religious liberty), and this accounts for the

---

[78] Semple does not note any petition from either of these associations to the General Assembly, nor do I find any note either of this petition or of the meeting of the Ketocton Association in Fristoe. Cf. Semple, 298, 301. Dr. C. F. James thinks this petition of the Ketocton Association may date back to 1771. Cf. *Religious Herald*, Jan. 12, 1899.

[79] See p. 16.

[80] Semple, 62.

desperation with which they threw themselves into the struggle, so that we have no record of so much as one thorough Baptist tory."[81] Thomas McClanahan, a preacher, raised a company of Baptists in Culpeper and took them into the army; John Gano and a number of other Baptist preachers are mentioned as being in active service; an increasing number of officers were or became Baptists as the war went on, and the rank and file was full of Baptist soldiers from the very beginning. Washington's testimony is given in his letter cited farther on.[82]

In May, 1775, both districts met as one association at Manakin-town or Dover meeting-house, Goochland county. Sixty churches were represented. The time was spent chiefly in prolonged and distressing debate on the question, "Is salvation by Christ made possible for every individual of the human race?"[83]

The petition "of sundry persons . . . . called Baptists, and other Protestant dissenters," already quoted, which had been presented to the Burgesses on May 12, 1774, was now presented to the Burgesses on June 13, 1775, and was ordered to lie upon the table.[84]

The districts met again as one association at Dupuy's meeting-house, Powhatan county in August, 1775, and proceeded vigorously to examine the things of this present world. "It seems that one great object of uniting the two districts at this time, was to strive together for the abolition of the hierarchy or Church establishment in Virginia. . . . . It was therefore resolved at this session to circulate petitions to the Virginia Convention or General Assembly, throughout the State, in order to obtain signatures. The

[81] Armitage, History of Baptists, 777.

[82] Life of Gano, pp. 94 ff.

This record should be made out and preserved. I would respectfully suggest to the learned and careful Editor of Semple's *History of the Baptists*, that he add to his services to Baptist history in particular and to Virginia history in general by drawing up a sketch of the Baptists from Virginia in the Revolutionary army.

[83] Semple, 55.

[84] Journal of Burgesses, June 13, 1775.

prayer of these was that the Church establishment should be abolished and religion left to stand upon its own merits, and that all religious societies should be protected in the peaceable enjoyment of their own religious principles and modes of worship. . . . They also determined to petition the Assembly for leave to preach to the army."[85] Jeremiah Walker, John Williams, and George Roberts were appointed a committee to wait on the convention. This matter is recorded in the Journal of the Convention as follows; "An address from the Baptists in this Colony was presented to the Convention and read, setting forth—that however distinguished from their countrymen, by appelatives and sentiments of a religious nature, they nevertheless consider themselves as members of the same community in respect to matters of a civil nature, and embarked in the same common cause; that, alarmed at the oppression which hangs over America, they had considered what part it would be proper for them to take in the unhappy contest, and had determined that in some cases it was lawful to go to war, and that they ought to make a military resistance against Great Britain, in her unjust invasion, tyrannical oppressions, and repeated hostilities; that their brethren were left at discretion to enlist, without incurring the censure of their religious community; and, under these circumstances many of them had enlisted as soldiers, and many more were ready to do so, who had an earnest desire their ministers should preach to them during the campaign; that they had therefore appointed four of their brethren to make application to this Convention for the liberty of preaching to the troops at convenient times, without molestation and abuse, and praying the same may be granted to them.

"*Resolved*, that it be an instruction to the commanding officers of the regiments of troops to be raised, that they permit the dissenting clergymen to celebrate divine wor-

[85] Semple, 62.

ship, and to preach to the soldiers, or exhort, from time to time, as the various operations of the military service may permit, for the ease of such scrupulous consciences as may not choose to attend divine services as celebrated by the chaplain."[86] "This," says Dr. Hawks, "it is believed was the first step made towards placing the clergy, of all denominations, upon an equal footing in Virginia."[87] It was the work of the Baptists alone, it is to be observed, and the step, though only a step, was a long one.

The occasion of this action of the Association was the ordinance of the Convention which met at "Richmond town" on July 17, 1775—"an Ordinance for raising and embodying a sufficient force for the defence and protection of this Colony." This provided for two regiments of regulars and also for sixteen regiments and battalions of minute-men in the sixteen districts into which the Colony was for that purpose divided. Each of these regiments and battalions was to have a chaplain to be appointed by the field-officers and captains, and when on duty the chaplain was to have a tent and be paid ten shillings a day—the pay of a major.[88] Of course these positions would go to the clergy of the Establishment, ten shillings a day and all. The Baptists could hardly hope to get any of the appointments, nor does there seem to be any evidence that they tried to do so at this time. But to have their preachers appear before the men and preach under the authority of the Convention was a dear assertion of practical equality, and as new as it was dear. This petition then was no blind blow in the dark. But to the hopes of the preachers, the sequel must have been disappointing. "Jeremiah Walker and John Williams," says the candid Semple, "being appointed by this Association, went and preached to the soldiers, when encamped in the lower parts of Virginia, they,

[86] Journal of Convention of Aug. 16, 1775.
[87] Hawks, Protestant Episcopal Church of Virginia, 138.
[88] Hening, Statutes at Large, ix, 9 ff.

not meeting with much encouragement, declined it, after a short time." [89]

Though the interval of time be brief, it is a far cry from John Waller and John Schackleford, put in jail for preaching in March, 1774, to Jeremiah Walker and John Williams preaching to the soldiers under the authority of the Convention of the whole Colony in October or November of 1775.

This same ordinance classed together "all clergymen and dissenting ministers," along with the Committee of Safety and the president, professors, students, and scholars of William and Mary College, among the exempts from enlistment for military duty.[90] The usual exemption of "all Quakers, and the people called Menonites" from serving in the militia, is made in a separate section [91] as a matter of course and is without the significance attaching to this new classification. The ordinance also makes one provision which may have given the Baptists some influence in the matter of chaplains. It provides that the captains of the companies and the field-officers should be appointed by the committees of the various districts into which the Colony was divided. The field-officers and the captains appointed the chaplains. Thus it may have been possible for the Baptists to affect these appointments.

The Convention classed together the clergy and the dissenting preachers in a prohibition also. In the ordinance regulating the election of delegates to the Convention, it provided: "That all clergymen of the Church of England, and all dissenting ministers or teachers, should be incapable of being elected as a delegate, or sitting and voting in Convention." [92]

---

[89] Semple, 62.

[90] Hening, ix, 28. This section with fine courtesy exempts also "the members of His Majesty's Council." [91] Hening, ibid., 34.

[92] Hening, ix, 57. This provision was distasteful to many Baptists, as the following extract from Leland shows: "If the office of a preacher were lucrative, there would be some propriety in

At the session at Richmond in December, 1775, the Convention provided for increasing the size of the two regiments and for raising six more regiments. In this ordinance it is directed that, in the great majority of counties, the captains should be appointed by the County Committees and the field-officers by the District Committees.[93] This would give the Baptists increased opportunity to exercise their influence, if they were disposed to do so.

The same ordinance makes another provision which shows how thoroughly the public needs and not abstract considerations of the rights of citizens were in the ascendant. "And be it further ordained, That hereafter no dissenting minister, who is not duly licensed by the general court, or the society to which he belongs, shall be exempted from bearing arms in the militia of this Colony." Apparently the number of preachers was being unduly increased by the exemption from service formerly declared. Greatness, too, has its penalties.

How desirous the State government was to conciliate all its citizens and to keep its forces in good condition is shown by the "Act for speedily recruiting the Virginia Regiments, etc.," passed two years later at the October session, 1777. One section provides: "And whereas there are within this commonwealth some religious societies, particularly Baptists and Methodists, the members of which may be averse to serving in the some companies or regiments with others, and under officers of different principles, though they would willingly engage in the defence of their country under the command of officers of their own religion: *Be it enacted*

---

his ineligibility; but as the office is not lucrative, the proscription is cruel. . . . In Virginia, their parsons are exempt from bearing arms. Though this is an indulgence that I feel, yet it is not consistent with my theory of politics; . . . an exemption from bearing arms is but a *legal indulgence*, but the ineligibility is constitutional proscription, and no legal reward is sufficient for a constitutional prohibition." (Writings, 122.) One is tempted to regret that Leland was not in the Convention.

[93] Hening, ibid., 75 ff.; ibid., 89.

"That such persons may raise companies, and if enough companies are raised, may form regiments having their own field-officers, chaplains, and so on."[94]

In the spring and summer of 1776, the Virginia Convention prepared and adopted the Declaration of Rights, with its immortal sixteenth section,[95] pronouncing religion henceforth free in Virginia (June 12, 1776), and also adopted the Constitution. In all this it does not appear that the Baptists as such took any direct part, though they doubtless did their duty as citizens, particularly at the polls.

The following remark by Fristoe makes it likely that they may have influenced the membership of this convention of 1776 as well as that of subsequent General Assemblies. Fristoe is speaking of the year 1776. "The business then was to unite, as an oppressed people, in using our influence and give our voice in electing members of the State Legislature—members favorable to religious liberty and the rights of conscience. Although the Baptists were not numerous, when there was anything near a division among the other inhabitants in a county, the Baptists, together with their influence, gave a caste to the scale, by which means many a worthy and useful member was lodged in the House of Assembly and answered a valuable purpose there."[96]

---

[94] Hening, ix, 348.

[95] This famous section is as follows: "A Declaration of Rights made by the representatives of the good people of Virginia, assembled in full and free Convention; which rights do pertain to them and to their posterity, as the basis and foundation of government. (Unanimously adopted June 12, 1776.)

"16. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence, and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love and charity towards each other."

Hening, ix, 109-112; cf. Bitting, Strawberry Association, p. 18.

[96] Fristoe, 90.

Eight days after the adoption of the Declaration of Rights, "A petition of sundry persons of the Baptist Church, in the County of Prince William, whose names are thereunto subscribed, was presented to the Convention and read; setting forth that at a time when this colony, with others, is contending for the civil rights of mankind, against the enslaving schemes of a powerful enemy, they are persuaded the strictest unanimity is necessary, among ourselves; and, that every remaining cause of division may, if possible, be removed, they think it their duty to petition for the following religious privileges, which they have not yet been indulged with in this part of the world, to wit: That they be allowed to worship God in their own way, without interruption; that they be permitted to maintain their own ministers and none others; that they be married, buried, and the like, without paying the clergy of other denominations; that, these things granted, they will gladly unite with their brethren, and to the utmost of their ability promote the common cause." The petition was referred to the Committee of Propositions and Grievances, which was ordered to "inquire into the allegations thereof, and report the same, with their opinion thereupon, to the Convention."[97]

This petition was probably from the Regular Baptist Church at Occoquon of which David Thomas was pastor,[98] and may be considered the forerunner of the petitions to the convention and of its consequent action at its next meeting in October as the General Assembly.

The next association had been appointed for Thompson's meeting-house, Louisa county, on the second Saturday in August, 1776. "They met accordingly," says Semple, "and letters from 74 churches were received, bringing mournful tidings of coldness and declension. This declen-

---

[97] Journal of Convention, under date.

[98] Semple; James, *Religious Herald*, Feb. 23, 1899.

sion is accounted for by some of the letters as arising from too much concern in political matters, being about the commencement of the Revolution. Others ascribed it to their dissensions about principles, etc. Both doubtless had their weight." This increase of nearly one-fifth in the number of Separate churches since the May meeting of 1775, does not seem to an outsider to mark either coldness or declension. There must have been between ninety and one hundred Baptist congregations, organized and unorganized, in existence at this time in Virginia. But it does not appear that the Separates took any organic action in behalf of further religious liberty at this meeting of the Association, or at other meetings held in this same year and in 1777. Not indeed until 1778, as far as the records seem to show, did the Association again petition the Legislature. The dissensions among the Baptists themselves were sharp. "This was an exceedingly sorrowful time," says Semple.

The Separate Association did not act, but the churches as congregations or as individual members did act, if we can attribute to the Baptists a share in the various petitions presented in the fall of 1776. The Journal of the House of Delegates often does not show from what denomination of dissenters the petitions came; it generally does show if the petition came from any representative body. The Baptists were now numerous, probably the most numerous body of dissenters in Virginia. They had in all probability already adopted the custom, afterwards used by them, of sending in petitions by counties so as to make the stronger impression on the legislature. It seems reasonable, therefore, to give them credit for a share in these petitions not otherwise accounted for. Accordingly in the pages following, such petitions are mentioned as if emanating from Baptist sources. This may be allowed the more readily because from this time on the Baptists worked with others for religious freedom and against the Establishment; that is to say, the Baptists were one element in a large and compli-

cated movement. The parts played by others in influencing legislative action will be set forth in due order.[99]

The first General Assembly of the State of Virginia met in Williamsburg on Monday, October 7, 1776. Among its early enactments was a bill which swept away all existing parliamentary laws restricting liberty of religious opinion and worship. This was done in part in response to the public demand as shown in petitions from many sources. The petitions probably or certainly from Baptist or partly Baptist sources are here given.

October 11, 1776. "A petition of sundry inhabitants of Prince Edward . . . that, without delay, all church establishments might be pulled down, and every tax upon conscience and private judgment abolished, and each individual left to rise or sink by his own merit and the general law of the land."—Referred to Committee for Religion.[100]

October 16, 1776. "A petition of dissenters . . . that having long groaned under the burthen of an ecclesiastical establishment, they pray that this, as well as every other yoke, may be broken, and that the oppressed may go free, that so, every religious denomination being on a level, animosities may cease," etc—Referred, etc.[101]

October 22, 1776. "Two petitions from dissenters from the Church of England in the counties of Albemarle, Amherst, and Buckingham . . . praying that every religious denomination may be put upon an equal footing."—Referred, etc.[102]

---

[99] Cf. Fristoe, p. 90-91.

These petitions exist in their original manuscript form in the State Library at Richmond, Virginia; but, owing to their chaotic condition, they are inaccessible. Not only the Baptists, but all those interested in the preservation of the sources of Virginia history should unite in an effort to secure an appropriation from the Virginia Legislature providing for the speedy cataloguing and publication of these valuable records. They would throw great light upon the genealogies as well as upon the social and political history of the State.

[100] Journal of House of Delegates, Oct. 11, 1776.

[101] Ibid., Oct. 16.

[102] Ibid., Oct. 22.

October 25, 1776. "Two petitions from dissenters . . . praying that the ecclesiastical establishment may be suspended or laid aside."—Referred, etc.[103]

November 1, 1776. "Petition from dissenters . . . in the counties of Albemarle and Amherst . . . praying that every religious denomination may be put upon an equal footing, independent of another."—Referred, etc.[104]

On November 9, 1776, it was "*Ordered*, That the Committee for Religion be discharged from proceeding on the petitions of several religious societies, and that the same be referred to the Committee of the whole House upon the state of the country."[105]

On November 19, the Committee of the Whole reported the following series of resolutions to the House: "*Resolved*, As the opinion of this Committee, that all and every act or statute, either of the parliament of England or of Great Britain, by whatever title known or distinguished, which renders criminal the maintaining any opinions in matters of religion, forbearing to repair to church, or the exercising any mode of worship whatsoever, or which prescribes punishment for the same, ought to be declared henceforth of no validity or force within this Commonwealth.

. . . . . .

"*Resolved*, That so much of the petitions of the several dissenters from the church established by law within this Commonwealth, as desires an exemption from all taxes and contributions whatever towards supporting the said church and the ministers thereof, or towards the support of their respective religious societies in any other way than themselves shall voluntarily agree is reasonable.

"*Resolved*, That though the maintaining any opinions in matters of religion ought not to be restrained, yet that public assemblies of societies for divine worship ought to be regulated, and that proper provision should be made for

[103] Journal House of Delegates, Oct. 25, 1776.
[104] Ibid., Nov. 1.
[105] Ibid., Nov. 9.

continuing the succession of the clergy, and superintending their conduct.

"*Resolved*, That the several acts of Assembly, making provision for the support of the clergy, ought to be repealed, securing to the present incumbents all arrears of salary, and to the vestries a power of levying for performance of their contracts.

"*Resolved*, That a reservation ought to be made to the use of the said church, in all time coming, of the several tracts of glebe lands already purchased, the churches and chapels already built for the use of the several parishes, and of all plate belonging to or appropriated to the use of the said church, and all arrears of money or tobacco arising from former assessments; and that there should be reserved to such parishes as have received private donations, for the support of the said church and its ministers, the perpetual benefit of such donations."

The resolutions were adopted and it was "*Ordered*, That Mr. Starke, Mr. Treasurer (Robt. C. Nicholas), Mr. Jefferson, Mr. Bullitt, Mr. Tazewell, Mr. Mason, Mr. Madison, Mr. McDowell, Mr. Gordon, Mr. Zane, Mr. Fleming, Mr. Henry, Mr. Griffin, Mr. Lewis, Mr. Simpson, Mr. Read, and Mr. Johnson, do prepare and bring in a bill persuant to the said resolutions."[106] This was a notable committee.

On November 30, it was "*Resolved*, That the committee appointed to prepare and bring in a bill pursuant to the resolution of the whole House on the petitions of the several dissenters be discharged therefrom, except as to so much of the third resolution as relates to exempting the several dissenters from the established church from contributing to its support, so much of the fifth as saves all arrears of salary to incumbents, and empowers vestries to comply with their contracts, excepting also the sixth resolution; and that it be an instruction to the said committee to receive a clause, or clauses, to make provision for the

[106] Journal of House of Delegates, Nov. 19, 1776.

poor of the several parishes, to regulate the provision made for the clergy, and to empower the several county courts to appoint some of their members to take lists of tithables where the same hath not been already done." [107]

On the same day "Mr. Starke, from the committee appointed, presented, according to order, a bill 'For exempting the different societies of dissenters from contributing to the support and maintenance of the church as by law established, and its ministers, and for other purposes therein mentioned'; which was read the first time, and ordered to be read a second time." [108] On December 2, the bill was read a second time and ordered to be committed to a committee of the whole House. On December 3 and 4 the bill was considered and amended and ordered to be engrossed and read a third time. On December 5 the bill was passed and carried to the Senate by Mr. Starke; and on December 9 the bill came back from the Senate with amendments; the House adopted the amendments, and the bill became a law.[109]

Mr. Jefferson thus records his recollection of this matter: "By the time of the Revolution, a majority of the inhabitants had become dissenters from the Established Church, but were still obliged to pay contributions to support the pastors of the minority. This unrighteous compulsion, to maintain teachers of what they deemed religious error, was grievously felt during the regal government, and without hope of relief. But the first republican legislature, which met in 1776, was crowded with petitions to abolish this spiritual tyranny. These brought on the severest contests in which I have ever been engaged. Our great opponents were Mr. Pendleton and Robert Carter Nicholas; honest men, but zealous churchmen. The petitions were referred to the Committee of the whole House on the state of the country; and after desperate contests in

[107] Journal House of Delegates, Nov. 30. [108] Ibid.
[109] Journal of House, *passim.*

that Committee, almost daily from the eleventh of October to the fifth of December, we prevailed so far only, as to repeal the laws which rendered criminal the maintenance of any religious opinions, the forbearance of repairing to church, or the exercises of any mode of worship; and further, to exempt dissenters from contributions to the support of the Established Church; and to suspend only until the next session, levies on the members of that church for the salaries of their own incumbents. For although the majority of our citizens were dissenters, as has been observed, a majority of the Legislature were churchmen. Among these, however, were some reasonable and liberal men, who enabled us, on some points, to obtain feeble majorities. But our opponents carried, in the general resolutions of the committee of November 19, a declaration that religious assemblies ought to be regulated, and that provision ought to be made for continuing the succession of the clergy, and superintending their conduct. And in the bill now passed was inserted an express reservation of the question whether a general assessment should not be established by law on every one to the support of the pastor of his choice; or whether all should be left to voluntary contributions; and on this question, debated at every session from 1776 to 1779 (some of our dissenting allies, having now secured their particular object, going over to the advocates of a general assessment), we could only obtain a suspension from session to session until 1779, when the question against a general assessment was finally carried, and the establishment of the Anglican church entirely put down."[110]

Mr. Jefferson minimizes the scope of this Act;[111] but in fact, to sweep away all restrictions on religious opinion and to exempt dissenters from all taxes for religious purposes, was a victory as decisive as the passage of the religious

[110] Jefferson, Works, vol. i, pp. 31-32.
[111] For the law in full, see Hening, ix, 164.

section of the Declaration of Rights. It is true that the Act purposely left open the question of a general assessment or of voluntary contribution for the support of the clergy. But from the premises laid down in 1776 to the conclusion reached in the great act of 1785, the process, if slow, was logically inevitable, provided independence were achieved.

As has already been stated,[112] the Baptists took no action as a body, so far as any records that have survived seem to show, at either session of the General Assembly in 1777, though a meeting of one of the Associations was held in April, 1777.

In May, 1778, a general Association was "holden" at Anderson's meeting-house in Buckingham. Thirty-two churches sent letters. "A committee was appointed to enquire whether any grievances existed in the civil laws that were oppressive to the Baptists. In their reports, they represent the marriage law as being partial and oppressive. Upon which it was agreed to present to the next General Assembly a memorial praying for a law affording equal privileges to all ordained ministers of every denomination."[113] The Association met again this year in October at Dupuy's meeting-house in Powhatan county, thirty-two churches being represented. "A committee of seven members was appointed to take into consideration the civil grievances of the Baptists and make report. (1) They reported . . . that should a general assessment take place, that it would be injurious to the dissenters in general. (2) That the clergy of the former established church suppose themselves to have the exclusive right of officiating in marriages, which has subjected dissenters to great inconveniences. (3) They, therefore, recommend that two persons be appointed to wait on the next General Assembly and lay these grievances before them. Jeremiah Walker and Elijah Craig (and in case of the failure of either), John

[112] See p. 42.

[113] Semple, 64.

Williams were appointed to attend the General Assembly." [114]

At this time it appears that the Association had lost hold on their members for some reason. Semple suggests "warm dissensions . . . combined with the ravages of war. From 60 and 70 churches which usually correspond, they had fallen to about 30 and 40. It seems that some had contracted unfavourable opinions of associations, and wished them to be laid aside." [115] Leland remarks: "Delegates from the churches assembled in associations once or twice in each year, but so much of the time was taken up in confiding what means had best be used to obtain and preserve equal liberty with other societies, that many of the churches were discouraged in sending delegates." [116]

Although this Committee was appointed in October, no petition is noted in the Journal of the House as from a Baptist source, except the petition of Jeremiah Walker, already cited,[117] asking for the refunding of his prison fee, and this was rejected. Whatever the source, however, the House had under consideration the matter of marriages, for on December 5, 1778, a bill "declaring marriages solemnized by dissenting ministers lawful" was presented and read the first time and was rejected two days later, December 7.[118] Evidently, only part of the story is told us by the existing records.

The Association met in May, 1779, in Goochland county. No account of this meeting is found.

At the spring session of the General Assembly in 1779, the committee for the revision of the laws submitted their report; and as this led to most important legislation, Mr. Jefferson's account of it is given here. He is speaking of what led up to the bill for religious freedom.

"Early, therefore, in the session of 1776, to which I returned, I moved and presented a bill for the revision of the

---

[114] Semple, 64. [115] Ibid., 65. [116] Leland, Writings, 113.
[117] See p. 19. [118] Journal, December 7, 1778.

laws; which was passed on the twenty-fourth day of October, and on the fifth of November, Mr. Pendleton, Mr. Wythe, George Mason, Thomas L. Lee and myself were appointed a committee to execute the work. We agreed to meet in Fredericksburg to settle the plan of operation, and to distribute the work. We met there accordingly on the thirteenth of January, 1777. The first question was whether we should propose to abolish the whole existing system of laws and prepare a new and complete Institute, or preserve the general system, and only modify it to the present state of things. Mr. Pendleton, contrary to his usual disposition in favour of ancient things, was for the former proposition, in which he was joined by Mr. Lee. . . . . This last was the opinion of Mr. Wythe, Mr. Mason and myself. When we proceeded to the distribution of the work, Mr. Mason excused himself, as, being no lawyer, he felt himself unqualified for the work, and he resigned soon after. Mr. Lee excused himself on the same ground, and died indeed in a short time. The other two gentlemen, therefore, and myself divided the work among us. . . . . We were employed in this work from that time to February, 1779, when we met at Williamsburg, that is to say, Mr. Pendleton, Mr. Wythe and myself; and meeting day by day, we examined critically our several parts, sentence by sentence, scrutinizing and amending, until we had agreed on the whole. We then returned home, had fair copies made of our several parts, which were reported to the General Assembly, June 18, 1779, by Mr. Wythe and myself, Mr. Pendleton's residence being distant, and he having authorized us by letter to declare his approbation. We had in this work brought so much of the common law as it was thought necessary to alter, all the British statutes from *Magna Charta* to the present day, and all the laws of Virginia, from the establishment of our Legislature, in the 4th of Jae 1st (James I) to the present time, which we thought should be retained, within the compass of one hundred and twenty-seven bills, making a printed folio of

ninety pages only. Some bills were taken out, occasionally, from time to time and passed; but the main body of the work was not entered upon by the Legislature, until after the general peace, 1785, when by the unwearied exertions of Mr. Madison, in opposition to the endless quibbles, chicaneries, perversions, vexations and delays of lawyers and demi-lawyers, most of the bills were passed by the Legislature, with little alteration. The bill for establishing religious freedom, the principles of which had, to a certain degree, been enacted before, I had drawn in all the latitude of reason and right. It still met with opposition; but with some mutilations in the preamble, it was finally passed." [119]

On June 4, 1779, Messrs. John Harvie, Mason, and Baker were ordered to prepare and bring in a bill "for religious freedom" and also a bill "for saving the property of the church heretofore by law established." The bills were read the first time on June 12, and on June 14 both bills were postponed "till the first day of August next" in order to get the sense of the people. Deep interest was shown in the bills, both for and against them.

At the meeting of the Association at Nottoway meeting-house, Amelia county, on the second Saturday of October, 1779, "the report by Jeremiah Walker, as delegate to the General Assembly, was highly gratifying upon which the following entry was unanimously agreed to be made:

"On consideration of the bill establishing religious freedom, agreed: That the said bill, in our opinion, puts religious freedom upon its proper basis; prescribes the just limits of the power of the State, with regard to religion, and properly guards against partiality towards any religious denomination; we, therefore, heartily approve of the same, and wish it may pass into a law. *Ordered*, That this our approbation of the said bill be transmitted to the public printers to be inserted in the Gazettes." [120]

---

[119] Jefferson, Works, i, pp. 34 ff.

[120] Semple, 65.

This additional extract from Semple shows the times: "It seems that many of the Baptists preachers, presuming upon a future sanction, had gone on to marry such people as applied for marriage. It was determined that a memorial should be sent from this Association requesting that all such marriages should be sanctioned by a law for that purpose. . . . . For a set of preachers to proceed to solemnize the rites of matrimony without any law to authorize them, might at first view appear incorrect and indeed censurable; but we are informed that they were advised to this measure by Mr. Patrick Henry, as being the most certain method of obtaining the law. It succeeded."[121]

The House Journal notes under October 25, 1779,[122] "a petition of the Baptist Association, setting forth that doubts have arisen whether marriages solemnized by dissenting ministers are lawful, and praying that an act may pass to declare such marriages lawful." On the same day a bill "concerning Religion" was presented by Mr. James Henry and read the first time, and was read again the next day, and sent to the committee of the whole House, for the following Tuesday, Nov. 2. A petition of sundry inhabitants of Amherst county was presented on Nov. 1, praying for the passage of the bill of the last Assembly "for establishing religious freedom."

On November 8, the Committee for Religion reported that the request of the Baptists as to marriages was reasonable, and the House ordered a suitable bill to be brought in.

November 10, 1779. "Divers of the freeholders and other free inhabitants of Amherst county," who afterwards describe themselves as "composed of Church of England men, Presbyterians, Baptists and Methodists," "unanimously and with one voice declare their hearty assent, concurrence, and approbation of the Act of January, 1779, declaring all church laws null, and the Act of Religious Free-

[121] Ibid., 65-66.
[122] Journal of House of Delegates, Oct. 25, 1779, and ff.

dom the true exposition of the Bill of Rights. Signed by a great number. Many for and against."[123]

On November 15, the bill concerning religion was put off "till first of March next," and Messrs. Mason, Henry, and General Nelson were ordered to bring in a bill "For saving and securing the property of the Church heretofore by law established," which bill was reported on November 26; and on November 29, the bill to amend an act concerning marriages was rejected.

On December 13, after being suspended since the October session of 1776, the bill for the support of the regular clergy was finally repealed by the House, and the Senate agreed. This repealing clause is as follows: "Be it enacted by the General Assembly—That so much of the act entitled—An act for the support of the clergy, and for the regular collecting and paying the parish levies, and of all and every other act or acts providing for the ministers, and authorizing the vestries to levy the same, shall be, and the same is hereby repealed."[124] This act severed the most important economic bond between Church and State in Virginia. It is not apparent that the Baptists had any immediately distinctive share in bringing about its passage.

The next Association met at Waller's meeting-house Spottsylvania county, May, 1780. No records. This Association seems to have petitioned the Assembly as appears under June 5, below.

The House Journal for 1780 notes: "May 12.—Petition from Amelia that marriages by dissenting ministers be declared lawful, also that vestries be dissolved.—Referred to Committee for Religion."[125] Many petitions for the dissolution of the vestries had been presented in preceding sessions. This is the first time that such a petition seems to have come from the Baptists.

---

[123] Cited from MS. Archives by Meade, vol. ii, 444-445. I give this for what it is worth. It seems inaccurate as it stands.

[124] Hening, x, 197.

[125] See House Journal under dates cited, here and hereafter.

Bishop Meade has the following entry concerning this petition:

"May 12, 1780.—Sundry inhabitants of Amelia pray that marriage licenses shall not continue to be directed, in the old form, to Episcopal ministers; that certain persons therefore doubted the validity of marriages by other than the Episcopal clergy; they pray that the ceremony 'without the use of the ring and the service' may be declared lawful. Successful. It led to the bill legitimizing children of all such marriages by Dissenting ministers. The Baptist Association, at Sandy Creek, Charlotte, petition for the same. Also other Baptist Associations."[126]

One June 5, "a petition from the Society of people called Baptists was presented to the House expressing doubts as to the lawfulness of the marriages by their ministers, and praying that a law pass legalizing them. Referred to Committee for Religion."

On June 8, George Carrington from the Committee for Religion reported that they had had the two petitions under consideration, and that both were reasonable. The Committee was ordered to bring in bills accordingly.

On June 28 a bill "for the dissolving of Vestries and electing overseers of the poor" was ordered.

On July 4, a bill declaring "what shall be lawful marriage" was read once; it was read again on July 6, and was committed to the Committee on Propositions and Grievances. On July 7, this Committee reported the bill without amendment, whereupon the bill was engrossed, read a third time, and sent to the Senate. It did not become a law at this session.

On July 7 the bill for dissolving several vestries and electing overseers of the poor was read the third time and passed. It became a law[127] on July 11.[128]

---

[126] Meade, vol. ii, 445. This reference to the Association at Sandy Creek must be a mistake, for the May Association was at Waller's.

[127] Hening, x, 288.

[128] Overseers of the poor were substitutes for vestries in the "back counties," Rockbridge, Botetourt, Montgomery, Washington, Greenbrier, Augusta and Frederick.

The next Association was held at Sandy Creek, Charlotte county, October, 1780. Twenty-nine churches were represented. A committee from the Regular Baptists requested that a similar committee should be appointed by this Association to consider national grievances in conjunction with them. Reuben Ford, John Williams and E. Craig were appointed on the Committee. "The third Thursday in November following was appointed a day of fasting and prayer in consequence of the alarming and distressing times." [129]

At the fall meeting of the Legislature on November 8, 1780, a memorial and petition from the Baptist Association was presented, praying for a law for marriages by dissenting ministers and for the abolition of the existing vestry law. Referred.

On November 21, the Committee for Religion reported that they had considered the memorial of the Baptists asking for a marriage law for dissenting ministers, and that the request was reasonable. The Committee was ordered to prepare a bill accordingly. The Committee reported also in favor of dissolving the vestries. The resolution was tabled.

On December 2, the Committee for Religion reported a bill declaring "what shall be lawful marriage," and it was read once. The bill was read a second time on December 4, and re-committed. On December 15, the Committee reported the bill with amendments, and it was engrossed and read a third time. On December 18, the bill was passed and sent to the Senate, and became a law soon after.[130] The act provides: "For encouraging marriages and for removing doubts concerning the validity of marriages celebrated by ministers other than the Church of England, be it enacted by the General Assembly—That it shall and may be lawful for any minister of any society or congregation of Christians, and for the Society of Christians called

[129] Semple, 66.

[130] Hening, x, 361.

Quakers and Menonists, to celebrate the rites of matrimony, and to join together as man and wife, those who may apply to them agreeable to the rules and usage of the respective societies to which the parties to be married respectively belong, and such marriage, as well as those heretofore celebrated by dissenting ministers, shall be, and they are hereby, declared good and valid in law." The second section makes special provision for Quakers and Menonists. The third section fixes the marriage fee; and the fourth fixes the penalty for failure to return the marriage certificate to the Clerk of the County. The fifth section authorizes the County Courts to grant licenses to not more than four dissenting ministers of any one sect in any one county to join in matrimony persons within their county only. The act was to go into force on January 1, 1781. It is easy to imagine the relief brought by this act to many husbands and wives who were also fathers and mothers; and easy also to imagine the social heart-burnings and the bitter hatred against the Establishment that its delay had caused.

About May, 1781, Lord Cornwallis was marching through Virginia from the South, and consequently only sixteen churches met in Buckingham county in Association and quickly adjourned till October, 1782. For the same reason the General Assembly was a peripatetic body during its spring session and took no action on religious matters.

At the fall session, on November 22, 1781, "Sundry inhabitants of Prince Edward county prayed that all the old vestries may be dissolved by Act of Assembly and new ones elected by the body of the community at large. Dissenters to be equally competent with conformists to the post of vestrymen, and the sole proviso to be attachment to the present form of government."[131] This was referred to the next Assembly on December 22, and finally rejected.

[131] Meade, ii, 445; cf. Journal of Delegates, Nov. 22.

One of the Committee for Religion of this session was Mr. Garrard. This is evidently the same man mentioned by Semple in his history of the Ketocton Association: "In this church arose James Garrard, late Governor of Kentucky. While in Virginia, he was distinguished by his fellow-citizens, and elected to the Assembly and to military appointments."[132] He was a member also of the General Assembly of 1785, and voted for the bill for Religious Freedom.

The Association met next at Dover meeting-house, Goochland county, in October, 1782. Thirty-two churches were represented. "Finding it . . . considerably wearisome to collect so many from such distant parts, and having already secured their most important civil rights, they determined to hold only one more General Association, and then dividing into districts, to form some plan to keep a standing sentinel for political purposes. . . . . Jeremiah Walker was appointed a delegate to attend the next General Assembly with a memorial and petitions against ecclesiastical oppression."[133] Walker was pastor of the Nottoway Church in Amelia (now Nottoway) county. He seems for some reason to have had several of these petitions sent up as coming from sundry inhabitants of that county.

This determination of the Association to "keep up a standing sentinel for political purposes" shows clearly both that the Baptists themselves were fully conscious that their propaganda contained a powerful political element, and that the public appreciated the fact also.

The Journal of the House of Delegates shows that on November 22, 1782, the Committee for Religion reported favorably on a part of a petition from Amelia county, asking the repeal of that part of the law defining lawful marriage which kept dissenting ministers from marrying people beyond the limits of their own counties—and a bill to that effect was ordered by the House; but reported unfavorably

[132] Semple, 315.

[133] Semple, 67.

on the part of the petition asking for the repeal also of the clause limiting the number of dissenting ministers who were to be licensed in each county to perform the marriage ceremony—and the House agreed to this part of the report also.

At the spring session of the Legislature in 1783, in response to a petition to authorize marriage by the civil authorities, the House, on May 30, ordered a bill to be brought in for "the relief of settlers on western waters." On June 25, this bill for "marriages in certain cases" was ordered to be engrossed and read a third time; it was passed and became a law on June 27.[134] The bill provided that the county courts on the western waters might license "sober and discreet laymen" to perform the marriage ceremony in the absence of accessible ministers under certain conditions, and it legalized "all such marriages heretofore made."

On May 30 and 31, memorials of the Baptist Association praying for the repeal of the vestry law and for the repeal and amendment of parts of the marriage act were presented and referred. On June 19, the bill "to amend the several acts concerning marriages" was deferred until October; on June 23 the bill concerning the vestries was likewise deferred until October.[135]

The General Association met for the last time at Dupuy's meeting-house, Powhatan county, on the second Saturday in October, 1783, with thirty-seven delegates present. It was "*Resolved*, That our General or Annual Association cease, and that a General Committee be instituted, composed of not more than four delegates from each district Association, to meet annually to consider matters that may be for the good of the whole Society, and that the present Association be divided into four districts: Upper and Lower Districts, on each side of the James River. . . . .

---

[134] Hening, xi, 281.

[135] Journal of the House, under respective dates.

Reuben Ford and John Waller were appointed delegates to wait on the General Assembly with a memorial. Then dissolved." [136]

On November 6, 1783, "a petition of the ministers and messengers of the several Baptist churches" for repealing or amending existing vestry and marriage laws and asking for religious freedom were presented to the General Assembly and referred to the Committee for Religion. On November 8 a petition came up from Lunenburg county (probably from Episcopalians) asking for "a general and equal contribution for the support of the clergy"; a similar petition from Amherst county was presented on November 27; nothing was done. On November 15, the Committee reported on these petitions, and bills were ordered to be brought in revising the laws as to vestries and election of overseers of the poor and as to marriages. These bills were presented from the Committee for Religion on December 16. No action was taken at this session.[137]

On May 26, 1784, a memorial of the Baptist Association asking relief from the vestry and marriage laws and praying for perfect religious freedom was presented to the General Assembly and referred to the Committee for Religion of which Madison was a member. On June 8, the Committee reported, among other things, "that so much of the memorials from the United Clergy of the Presbyterian Church in Virginia, and the Baptist Association, as prays that the laws regulating the celebration of marriage, and relating to the constitution of vestries, may be altered; and that in general all legal distinctions in favor of any particular religious society may be abolished, is reasonable. That so much of the memorial from the clergy of the Protestant Episcopal Church, and the United Clergy of the Presbyterian Church in Virginia, as relates to an incorporation of their Societies is reasonable; and that a like incorporation ought to be extended to all other religious Societies within

[136] Semple, 68-69.

[137] Journal of the House, *loc. cit.*

this Commonwealth which may apply for the same."[138] Bills were ordered accordingly.

On June 25, the bill to incorporate the Protestant Episcopal Church was put off to the second Monday in November.[139]

The General Committee met for the first time on Saturday, October 9, 1784, with delegates from four Associations present. William Webber was appointed Moderator, and Reuben Ford, Clerk, and these positions they held, except for a few sessions, till the dissolution of the Committee in 1799. The important articles of their Constitution were: "1. The General Committee shall be composed of delegates sent from all the district Associations that desire to correspond with each other. 2. No Association shall be represented in the general committee by more than four delegates. 3. The Committee thus composed shall consider all the political grievances of the whole Baptist society in Virginia, and all references from the district Associations respecting matters which concern the Baptist society at large. 4. No petition, memorial, or remonstrance shall be presented to the General Assembly from any association in connexion with the General Committee—all things of that kind shall originate with the General Committee."[140] We have here the usual machinery of political party organization with which our people have been familiar for many generations.

The Committee went vigorously to work. They drew up a memorial to the General Assembly for the repeal of the vestry law and for the modification of the marriage law, which they committed to their Clerk, Rev. Reuben Ford, for presentation; and they determined to oppose the proposed laws for a general assessment and for the incorporation of religious societies. The memorial was presented to

---

[138] Journal of the House, *loc. cit.* [139] Journal of the House.

[140] Semple, 69-70. Compare this with the note from Thomas cited on p. 32.

the General Assembly, November 11, 1784, and was referred to the Committee for Religion, of which both Madison and Henry were now members. On November 17, the House ordered bills to be brought in regulating the laws as to marriage and the vestries; and ordered also a bill "to incorporate the clergy of the Protestant Episcopal Church." The House adopted the resolution "that acts ought to pass for the incorporation of all societies of the christian religion, which may apply for the same." Madison voted against it.[141]

The bill amending acts concerning marriage was read the third time on December 16, and sent to the Senate, and soon after became a law. It enacted "that it shall and may be lawful for any ordained minister of the Gospel in regular communion with any society of Christians, and every such minister is hereby authorized to celebrate the rites of matrimony according to the forms of the Church to which he belongs."[142] This put all ministers on the same footing before the law.

On December 28, the Senate passed the bill as amended incorporating the Protestant Episcopal Church.[143] By this law each vestry could hold property up to the value of a certain yearly income, could sue and be sued, like any other corporation, and could hold the glebe lands and the churches. This act soon after became an object of bitter attack.

For the present, however, the legislative subject that occupied the Baptists, and others, most engrossingly, was the bill brought in on December 2, read the second time the next day, and re-committed to the Committee of the Whole. It was entitled "A bill establishing a provision for the teachers of the Christian religion." It provided for a general assessment and that all persons should declare, when giving in their taxes, to what denomination they wished their assessments to go. If no such declaration were made,

[141] See Journal of House. [142] Hening, xi, 503. [143] Ibid., 532.

then the money so assessed was to go to encourage seminaries of learning in the respective counties. On December 24, by a vote of 45 to 38, the engrossed bill was postponed till the fourth Thursday in November, 1785; and it was resolved that the bill and the ayes and noes thereon should be printed and distributed throughout the State to ascertain the sentiments of the people as to this legislation. This was accordingly done, and resulted in wide-spread discussion and agitation.

At their next meeting, August 13, 1785, the Committee heard with satisfaction from Reuben Ford of the amendments to the marriage law and with alarm of the engrossed bill for a general assessment which had been deferred till the next Assembly for the purpose of getting the sentiment of the people on its provisions. The Committee promptly "*Resolved*, That it be recommended to those counties which have not yet prepared petitions to be presented to the General Assembly against the engrossed bill for the support of the teachers of the Christian religion, to proceed thereon as soon as possible; that it is believed to be repugnant to the spirit of the Gospel for the Legislature thus to proceed in matters of religion, that the holy Author of our religion needs no such compulsive measures for the promotion of His cause; that the Gospel wants not the feeble arm of man for its support; that it has made, and will again, through divine power, make its way against all opposition; and that should the Legislature assume the right of taxing the people for the support of the Gospel, it will be destructive to religious liberty. *Therefore*, This Committee agrees unanimously that it will be expedient to appoint a delegate to wait on the General Assembly with a remonstrance and petition against such assessment. Accordingly, the Rev. Reuben Ford was appointed." This meeting of the Committee determined also to adopt for the Baptists the marriage ceremony as found in the Common Prayer book, some omissions being made.[144]

[144] Semple, 71-72.

The terms of this resolution show that the Baptists had not waited for the meeting of their General Committee to begin to gird up their loins for the coming fight. The Committee "recommended to those counties which have not yet prepared petitions," runs the resolution, which means that many petitions were ready and waiting to swarm in upon the Assembly. The petitions enumerated below were not all from Baptists; but they are given as showing the state of public feeling.

The General Assembly met on October 17, 1785. Among the early bills passed was the "Act to provide for the poor of the several counties within this Commonwealth." This act provided for districts in the counties and for overseers of the poor to whom were to be transferred the powers of the churchwardens as to bastards, and also the powers and duties of the vestries.[145] This destroyed the civil power of the vestries, leaving them mere parts of the organization of the Protestant Episcopal Church.

On October 25, 1785, the Committee for Religion was appointed by the House.[146] On October 26, petitions against the bill making "provision for the teachers of the Christian religion," or the general assessment bill, as it was called, were presented from Cumberland and Rockingham; on October 27, similar petitions from Caroline, Buckingham, Henry, Pittsylvania, Nansemond, Bedford, Richmond, Campbell, Charlotte; October 28, from Accomac, Isle of Wight, Albemarle, Amherst; October 29, from Louisa; November 2, from Goochland, Westmoreland, Essex, Culpeper, Prince Edward, also the memorial and remonstrance of the Presbyterian Church in Virginia; November 3, from Fairfax, Orange, and also the "Memorial and Remonstrances of the General Committee of Baptists";[147]; November 5, from King and Queen; November 7, from Pittsylvania; November 9, from Mecklenburg,

[145] Hening, xii, 27.

[146] Journal of House under this date and so following.

[147] This noble paper, given by Semple, 435, and too long to print here, is by James Madison. Dr. Hawks says the bill for Religious

Amelia, Brunswick; November 10, from Middlesex; November 14, from Chesterfield, Fairfax; November 15, from Montgomery; November 17, Remonstrance of Baptist Association (Orange, September 17), also from Hanover, Princess Anne; November 18, from Amelia; November 28, from Henrico, Brunswick, Dinwiddie, Northumberland, Prince George, Powhatan, Richmond; November 29, from Spottsylvania, Botetourt, Fauquier, Southampton; December 1, from Lunenburg, Loudoun, Stafford, Henrico; December 10, from Washington, Amherst, Frederick, Halifax —in all, and not counting several petitions herein mentioned and others not mentioned, fifty-five hostile petitions from forty-eight different counties came within the space of a month and a half to remind the Legislators of the opinions of their constituents. Seven counties also sent petitions favorable to the bill, six of them in the list of counties given above and only one county, Surrey, sent a favorable petition and none other. Twenty-two counties out of seventy-one, less than one-third, sent no petitions.

In the presence of this exhibition of public sentiment, it is not surprising that the assessment bill was defeated; that on December 17, the bill for Religious Freedom passed to the Senate by a vote of seventy-four to twenty; that on January 16, 1786, the Senate amendments were agreed to; and that on January 19, 1786, signed by the Speaker of the House as an enrolled bill, the "Bill for establishing Religious Freedom" became the recognized law[148] of the land in Virginia, the first government in the world to establish and maintain the absolute divorce of Church and State, the greatest distinctive contribution of America to the sum of Western Christianized Civilization.[149]

Freedom was "preceded by a memorial from the pen of Mr. Madison, which is supposed to have led to the passage of the law." Prot. Ep. Ch. in Va., *passim.*

[148] Hening, xii, 84.

[149] It will be seen that the writer does not share the opinion that religious freedom had already been established in Rhode Island in 1644.

With the passage of the "Act of 1785," as it is generally known, the real struggle for religious freedom was over. Religious strife was not at an end, unhappily. But the struggle that followed was no longer that of the people ris-

---

This famous law is here given in the form in which it was reported to the General Assembly by Jefferson, Wythe, and Pendleton in 1779:

"Report of Committee of Revisors appointed by the General Assembly of Virginia in 1776.

Published by order of the General Assembly, June 1, 1784.

Dixon and Holt, Richmond, November, 1784. pp. 58-59.

CHAPTER LXXXII.

"Bill for Establishing Religious Freedom.

Section I. Well aware that the opinions and beliefs of men depend not on their own will, but follow involuntarily the evidence proposed to their minds; that Almighty God hath created the mind free, and manifested his supreme will that it shall remain by making it altogether insusceptible of restraints; that all attempts to influence it by temporal punishments, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the holy author of religion, who being lord both of body and mind, yet chose not to propagate it by coercion on either, as was in his Almighty power to do, but to extend it by its influence on reason alone; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world and through all times; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness; and is withdrawing from the ministry those temporary rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labours for the instruction of mankind; that our civil rights have no dependence on our religious opinions, any more than on opinions in physics or geometry; that therefore the prescribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and

ing to demand their rights; it was rather of the kind which has so often verified the poet's caustic saying that "New Presbyter is but old Priest writ large."

The next General Committee, August 5, 1786, learned

---

emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which, in common with his fellow-citizens, he has a natural right; that it tends also to corrupt the principles of that very religion it is meant to encourage, by bribing with a monopoly of worldly honors and emoluments those who will externally profess and conform to it; that though indeed those are criminal who do not withstand such temptations, yet neither are those innocent who lay the bait in their way; that the opinions of men are not the object of civil government, nor under its jurisdiction; that to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous fallacy, which at once destroys all religious liberty, because he being of course judge of that tendency will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of Civil Government for its officers to interfere when principles break out into overt acts against peace and good order; and, finally, that truth is great and will prevail if left to herself, that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict unless by human interposition disarmed of her natural weapons, free argument and debate; errors ceasing to be dangerous when it is permitted freely to contradict them.

Section II. We, the General Assembly of Virginia do enact that no man shall be compelled to frequent or support any religious worship, place or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer, on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge or affect their civil capacities.

Section III. And though we well know that this Assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding Assemblies, constituted with powers equal to our own, and that, therefore, to declare this act irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement of natural right."

with pleasure "that the law for assessment did not pass;[150] but on the contrary, an act passed explaining the nature of religious liberty. This law, so much admired for the lucid manner in which it treats of and explains religious liberty, was drawn by the venerable Mr. Thomas Jefferson."[151]

The Baptists had now their full religious liberty. But the Committee were not satisfied. They were aggrieved that the Episcopalians should be incorporated and should hold possession of their glebes and churches. They, therefore, "*Resolved*, That petitions ought to be drawn and circulated in the different counties and presented to the next General Assembly, praying for a repeal of the incorporating act, and that the public property which is by that act vested in the Protestant Episcopal Church be sold, and the money applied to the public use, and that Reuben Ford and John Leland attend the next Assembly as agents in behalf of the General Committee."[152]

With the passage of the bill for Religious Freedom, as has already been said, the real struggle was over. But the momentum was too great; the impulse had to expend itself. The course it took was that commonly seen when a great popular party movement falls, so to speak, into the hands of those whom it has hitherto borne along. The part

[150] Semple rather claims for the Baptists the credit of defeating the General Assessment bill. "The Baptists, we believe, were the only sect who plainly remonstrated. Of some others, it is said that the laity and ministry were at variance upon the subject so as to paralyze their exertions either for or against the bill. These remarks, by the way, apply only to religious societies acting as such. Individuals of all sects and parties joined in the opposition" (pp. 72-73). Leland gives a somewhat different impression in his caustic remark on the subject: "When the time came, the Presbyterians, Baptists, Quakers, Methodists, Deists, and Covetous, made such an effort against the bill that it fell through" (Writings, p. 113). Leland wrote in 1789-1790; Semple wrote in 1809. "Deists and Covetous," quoth Leland. The economic principle never stops work.

[151] Semple, 72. It makes a singular impression on us to hear the active, eager, ever-young Jefferson called "the venerable"—as he was.

[152] Semple, 73.

played by the Baptists in the struggle for civil and religious liberty from 1774 to 1785 was admirable; the same cannot be said without qualification for their course from 1785 to 1802.

This part of our story can be told quickly, as there is no need to attempt to trace in it any phase of popular agitation.

At the session of 1786, the Assembly yielded to the pressure brought to bear on it, and repealed January 9, 1787, the Act incorporating the Protestant Episcopal Church but provided at the same time that each religious society should be secured in its property and authorized to regulate its own discipline.[153]

During all this period the law-making body regarded the Episcopal Church as the legal successor to the Established Church in the ownership of the property attached to it. Not so the Committee, as we shall see.

The fourth session of the General Committee, August 10, 1787, united the Separate and Regular Baptists under the name of the "United Baptist Churches of Christ in Virginia." They received the report from their legislative committee, Messrs. Ford and Leland, that the incorporation of the Protestant Episcopal Church as a religious society had been repealed, but that the law remained in force so far as the glebes and churches were concerned. "Whereupon, the question was put whether the General Committee viewed the glebes, etc., as public property; . . . by a majority of one they decided that they were. They did not, however, at this time send any memorial to the General Assembly."[154] Thus by a majority of one this body of preachers decided a grave question of law as to the ownership of the property of another denomination, and having once made the decision, they followed it with a pertinacity truly ecclesiastical.[155]

---

[153] Hening, xii, 266.

[154] Semple, 74.

[155] The legal aspects of this matter will be discussed in another connection.

"The next General Committee met at Williams's meeting-house, Goochland county, March 7, 1788. They considered whether the new federal constitution, which had now lately made its appearance in public, made sufficient provision for the secure enjoyment of religious liberty, on which it was agreed unanimously that, in the opinion of the General Committee, it did not. Whether a petition shall be offered to the next General Assembly, praying for the sale of the vacant glebes. After much deliberation on this subject, it was finally determined, that petitions should be presented to the next General Assembly, asking the sale of the vacant glebes as being public property; and, accordingly, four persons were chosen from the General Committee to present their memorial, viz., Eli Clay, Reuben Ford, John Waller, and John Willams."[156]

At the meeting in August, 1788, the Committee resolved "that the business should be entrusted to the care of Elders Leland, Waller, and Clay, to be left discretionary in them to present a memorial or not, as they may think best."[157] The memorial was presented.

The next meeting, held in Richmond, August 8, 1789, sent an address prepared by John Leland[158] to Washington, now President of the United States, as to the security of religious liberty under his administration. They received the following reply, worthy of the writer:

"To the General Committee representing the United Baptist Churches in Virginia: Gentlemen—I request that you will accept my best acknowledgements for your congratulation on my appointment to the first office in the nation. The kind manner in which you mention my past conduct equally claims the expression of my gratitude.

---

[156] Semple, 76-77. Semple adds a note: "The memorial was presented, and similar memorials and petitions continued to be presented to the legislature from the General Committee until 1799, when they gained their object." Bitting gives Mr. Clay's name as Eleazer. [157] Semple, 78. [158] Leland's Works, 52, note.

After we had by the smiles of Divine Providence or our exertions, obtained the object for which we contended, I retired at the conclusion of the war with the idea that my country could have no further occasion for my services, and with the intention of never entering again into public life; but when the exigencies of my country seemed to require me once more to engage in public affairs, an honest conviction of duty superseded my former resolution and became my apology for deviating from the happy plan which I had adopted.

"If I could have entertained the slightest apprehension that the Constitution framed in the convention where I had the honor to preside might possibly endanger the religious rights of any ecclesiastical society, certainly I would never have placed my signature to it; and if I could now conceive that the General Government might ever be so administered as to render the liberty of conscience insecure, I beg you will be persuaded that no one would be more zealous than myself to establish effectual barriers against the horrors of spiritual tyranny and every species of religious persecution.

"For you doubtless remember I have often expressed my sentiments that every man conducting himself as a good citizen, and being accountable to God alone for his religious opinions, ought to be protected in worshiping the Deity according to the dictates of his own conscience.

"While I recollect with satisfaction that the religious society of which you are members have been throughout America, uniformly and almost unanimously, the firm friends of civil liberty, and the persevering promoters of our glorious revolution, I cannot hesitate to believe that they will be the faithful supporters of a free yet efficient General Government. Under this pleasing expectation I rejoice to assure them that they may rely upon my best wishes and endeavors to advance their prosperity.

"In the meantime be assured, gentlemen, that I entertain

a proper sense of your fervent supplication to God for my temporal and eternal happiness.

"I am, gentlemen, your most obedient servant,

"George Washington." [159]

The minutes of the meeting of the Committee of May 10, 1790, state: "On a motion, it is desired that our Rev. Brethren who waited on the General Assembly last session, with a memorial and petition from the committee praying for the sale of the glebe lands, that are public property, and the opening of the churches for the different societies, do make their report. Accordingly they reported that, agreeable to their instructions, they waited on the Honorable Assembly; that the petition was presented to the house and received, but that the subject matter prayed for was not granted."

The Committee decided to present another memorial and petition to the next General Assembly and to recommend "that like petitions be presented from the different counties of the State." It was also "agreed to write to the Methodist Conference, to the Presbyterian Presbytery, and to President Smith, acquainting them with our purpose in the said petitions, and soliciting their assistance in obtaining subscribers." Committees were appointed to deliver these letters.

The Circular Letter to the Ministers of 1790 says: "We have agreed to make a vigorous exertion, for the sale of the glebes, and free occupation of the churches by all religious societies; and recommend it to you to do your endeavors, to get as many subscribers therefor as you can. And we also solicit contributions for the committee fund to defray the expenses of those who are appointed to wait on the Legislature with our memorial." [160]

With regard to the meeting of the Committee of May 14,

---

[159] Leland and Semple, *passim.* I give this valuable letter entire, as it is not found in the editions of Washington's writings by Sparks and Ford.

[160] Quoted by Bitting, 23-24.

1791, Semple says: "The memorial against the glebes, etc., was the only business before them," and he also remarks that something "proved fatal to the rising prosperity of the General Committee. For from that session, it began to decline, and so continued until it was finally dissolved in the year 1799." [161]

The Committee evidently did not realize or believe that it was in any danger of declining as the following extract from the Circular Letter to the Minutes of 1791 shows: "We desire you to view us only as your political mouth, to speak in your cause to the State Legislature, to promote the interests of the Baptists at large, and endeavor the removal of every vestige of oppression. In the prosecution of this service, which we know was your original design in sending us here, we are determined to exert every nerve, till the heavy burdens are removed and the oppressed go free." [162]

Of the meeting at Tomahawk meeting-house, Chesterfield county, May 12, 1792, we are told: "The old question respecting the glebes and churches, as it was generally called, of course was taken up and fell into the usual channel." [163] Rippon's *Register* contains the following notice of this meeting: " . . . The Delegate who waited on the last General Assembly with a memorial and petition, informed the Committee, That agreeable to his appointment, he waited on the Assembly with said memorial; that it was received by the House, but that the prayer of the said petition was rejected. The Committee recommended that a lay member be appointed to wait on the Assembly with a memorial from the General Committee, remonstrating against those laws that have vested the glebe lands in the hands of the Vestry, and their successors, for the sole use of the Episcopal Church." [164]

---

[161] Semple, 81. [162] Bitting, *loc. cit.*, 25. [163] Semple, 84.
[164] Rippon's *Register*, vol. i, 1790-1793, pp. 534-5. It is interesting, though it may be purely accidental, that Semple writes upon this

The Minutes of the Meeting, May 15, 1792, add: "The memorial being read and amended, was agreed to; and brother Thomas Burford appointed to wait on the General Assembly with the same, and the Rev. William Webber is directed to give due notice in the public papers."[165]

This appointment of a layman to represent the General Committee seems significant. The "great revival" was over. It was not wise to press the clerical aspect of the matter too far. Not only was the irreligious tendency of the times to be taken into consideration, but the Virginia Baptists as a class could not have felt in real need of more liberty, however their committee of professional preachers might feel about it. Thus the Rev. Isaac Backus, writing from Middleborough, Massachusetts, July-October, 1789, to Rippon's *Register*, says of the Virginia Episcopalians "now their power is so gone that Episcopal worshipers are but a small sect in that State and have no power to demand a farthing from any man for the maintenance of their ministers; nor has any tax been gathered by force to support any denomination of Christians for three years past. *Equal Liberty of Conscience* is established, as fully as words can express it. O! when shall it be so in *New England?* However, God is working wonders here."[166] And four years later Rev. H. Toler writes to the *Register* from Westmoreland county, Virginia, April 5, 1793, "Liberty of conscience has been unlimited in this State ever since, or soon after, the Declaration of American Independence; unless

---

occasion alone (p. 84), "the glebes and churches." Otherwise he invariably writes, as far as I have noticed, "the glebes, etc." The Baptists were not trying only to sell the glebes but also to open by law to other denominations the churches that had belonged to the Establishment. There seems to be nothing to show that the Baptists wanted either to sell or to destroy the churches themselves. That was, however, in many cases the result of their action, and Semple was writing at a time when that result was plainly and painfully evident.

[165] Quoted by Bitting, *loc. cit.*, 26.

[166] Rippon's *Register, loc. cit.*, 94.

the case of the glebes, mentioned in the Minutes of the General Committee, be an exception." [167]

"The General Committee," Semple tells us, "continued to be holden at the usual time of the year, at the following places (which are enumerated down to) 1799 at Waller's meeting-house, Spottsylvania county, where they agreed to dissolve. During this period, an unreasonable jealousy of their exercising too much power was often manifested both by associations and individuals. This added to some other courses, produced a gradual declension in the attendance of members as well as a nerveless languor in the transaction of business. The remonstrance respecting glebes, etc., was the only business which excited no jealousies, and that was the only matter which was ever completed after the year 1792." [168]

The letter from the Dover Association to Rippon's *Register* under date of October, 1800, states that the Committee, while holding their meeting in Spottsylvania in May, 1799, heard that the prayer of their memorial to the last General Assembly as to glebe lands was granted, and adds: "The Committee, therefore, having secured their object, do not think it expedient to exist any longer. But sufficient praise is not easily to be given to them for their perseverance." [169]

The General Assembly at their meeting in 1798, took up, finally, this matter of the glebes and disposed of it as to the right of ownership in them. On January 24, 1799, an act was passed "to declare the construction of the bill of rights and constitution concerning religion." This act recites that various preceding acts, of 1776, 1779, 1784, etc., "do admit the Church established under the regal government to have continued so, subsequently to the constitution; have bestowed property upon that Church; have asserted a legislative right to establish any religious sect, and have

[167] Rippon's *Register*, *loc. cit.*, 543. [168] Semple, 85.
[169] Rippon's *Register*, vol. 1801-1802, p. 789.

incorporated religious sects, all of which is inconsistent with the principles of the constitution and of religious freedom and manifestly tends to the establishment of a national Church"; it then repeals all these laws.[170] This caused all the property in any way held by Episcopal Church organization to revert to the public fisc, unless for some special reason retained.

Affairs remained in this condition until the session of 1801, when the Legislature returned to the charge and on January 12, 1802, passed a bill directing the overseers of the poor to sell the glebes for the benefit of the public. The preamble to this bill sets forth that "the General Assembly on the twenty-fourth day of January, 1799, by their act of that date, repealed all the laws relative to the late Protestant Episcopal Church, and declared a true exposition of the principles of the bill of rights and constitution respecting the same to be contained in the act entitled 'An act for establishing religious freedom' (Jefferson's law of 1785); thereby recognizing the principle that all property formerly belonging to the said Church, of every description, devolved on the good people of this Commonwealth on the dissolution of the British government here in the same degree in which the right and interest of the said Church was therein derived from them; and that although the General Assembly had the right to authorize the sale of all such property indiscriminately, yet being desirous to reconcile all the good people of this Commonwealth, it was deemed inexpedient at that time to disturb the possession of the present incumbents." The law then enacted that in any county where any glebe was or should become vacant, the overseers of the poor should have full power to sell the same. The proceeds were to be appropriated to the poor of the parish, or to any other object which a majority of freeholders and housekeepers in the parish might by writing direct, provided that nothing should authorize an ap-

[170] Code of Virginia, cf. Churches.

propriation of it "to any *religious* purpose whatever." The church buildings, with the property contained in them, and the churchyards were not to be sold under the law, neither were any private donations made before the year 1777 to be sold, if there were any person in being entitled to hold property under the original donor. Gifts of any kind made after the year 1777 were left untouched.[171]

"The warfare," says Dr. Hawks sententiously, "the warfare begun by the Baptists seven-and-twenty years before, was now finished."[172]

This selling of the Church property was not the work of the Baptists alone by any means; but both from their numbers and from the continuity of their organized attack, they seem to have been the dominant influence. Year after year from 1786 to 1799, with the possible exception of the year 1787, memorials went in to the General Assembly from the General Committee, demanding the sale of the glebe lands as an act of justice and of public right. During this same period the members of the General Assembly who were themselves Baptists or of Baptist sympathies in the matter must have steadily increased. The "great revival" of 1785 to 1792 was going on. A letter in 1789 from Dr. ——, in New York to Rippon's *Register* says: "I have the most credible information that nearly one-half the inhabitants of both Virginia and North Carolina are Baptists, or inclining to those sentiments now." And a letter from Baltimore a few months later, February 4, 1790, adds: "A few months since I received a letter from one of the ministers in said State (Virginia), giving an account of between four and five thousand persons added to one association in less than fifteen months' time."[173] These estimates are doubtless exaggerations of fact, but probably not of public belief about the fact. Semple writes of this

[171] Code of Virginia, Churches.
[172] Hawks, Protestant Episcopal Church in Virginia, 233.
[173] Rippon's *Register*, vol. 1790-93, 100-101.

revival: "It continued spreading until about 1791 or 1792. Thousands were converted and baptized, besides many who joined the Methodists and Presbyterians. The Protestant Episcopalians, although much dejected by the loss of the Establishment, had nevertheless continued their public worship, and were attended by respectable congregations. But after this revival, their society fell fast into dissolution."[174] Under these conditions, it is not surprising that the laws of 1799 and 1802 should have been passed, nor that the law of 1802 should have been executed with a harsh disregard of minor rights. The axe was laid to the root.

Whatever may be our opinion of the spirit of this sectarian pursuit of another sect, we cannot help feeling that the logic of the event was worked out with a just completeness rare in history. So far as the Baptists were concerned, the Established Church from 1768 to 1774 had taught "instructions which being taught returned to plague" her successor, the Protestant Episcopal Church, from 1784 to 1802. During all those years, the Baptists followed with passionate eagerness the ideal of religious freedom to its logical consequence of absolute separation of Church and State. In the process they had a large share, and for the result they deserve immense credit.

. . . . . .

The spread of Baptist and Presbyterian doctrine in Virginia during the years immediately preceding and including the Revolution, with the religious and political consequences ensuing, seems almost a repetition, due allowance being made, of what took place in England during the first half of the seventeenth century. Of Virginia too it might be said as has been said of the mother country: "Virginia became the land of a book, and that book the Bible."

In fact, the Baptists represent in Virginia history be-

[174] Semple, 38.

lated politico-religious Puritanism—not imported, not the Puritanism of England nor of New England, but native, genuine, and characteristic.[175] The Quakers, suspected and feared when they first came into the Colony, never acquired extended nor permanent influence over the population. The average Virginian has loved and still loves too much expression and not repression. He looked upon the idea of non-resistance, passive, active, or in any other mood and tense as a reflection upon his manhood. The nobler aspects of Quakerism were for him largely obscured by their peculiar sectarian conditions. The handful of General Baptists in the southeastern corner of the Colony remained for fifty years a handful, almost unknown and without influence. The mass of the Presbyterians were at first immigrants of the sturdy Scotch-Irish stock; they brought their opinions with them, ready formulated in a distinctive creed. The Methodists were Puritan in the original sense of the word; but they remained with and in the State Church all during the Revolution, not separating from it until about twelve months before the passage of the Act for Religious Freedom.

Puritanism, then, even during the Commonwealth time, had never made itself a home in Virginia as in other colonies, Maryland, for example.[176] Virginia had been and remained in her social, religious, and political life the most purely English of all the colonies. Conservative because of her widely scattered agricultural and plantation life, rendered still more conservative by the inevitable conditions accompanying the slavery of an alien race, Virginia felt, but

[175] They represent also the popular resistance to Virginia semi-feudalism, a feudalism at once an incipiency and a survival. Mr. John Morley, speaking (in his *Oliver Cromwell*, p. 23) of John Pym, says: "He was a Puritan in the widest sense of that word of many shades; that is to say, in the expression of one who came later, 'he thought it part of a man's religion to see that his country be well governed,' and by good government he meant the rule of righteousness both in civil and in sacred things."

[176] Fiske, Old Virginia and her Neighbors, i, 301-318; ii, 17-18.

did not yield to the impulse of either Quaker or Presbyterian. Slowly she ripened to the harvest. As in England, not until the social, religious, and economic conditions were favorable, did the political aspiration of the race for freedom have free vent; and then, as in England again, Teutonic individualism appeared rampant. Constrained at once and encouraged by the march of political events, this individualism gave itself free reign in religion, and, as in England just before the downfall of divine Monarchy, a kind of religious anarchy spread in Virginia, a tremendous revolutionary impulse which rapidly consolidated under the Baptist form of church organization with the Bible as the sole standard of faith.

It is this aspect which makes, in part, that early Baptist movement in Virginia of such exceeding interest to the student of history and to the lover of freedom. The people themselves were of very pure English breed, and they belonged to the yeomanry of the country. The movement was a movement "of the people, by the people, for the people"; and its aim was freedom.

In this brief sketch we have seen the rapid dissemination of Baptist religious principles under the operation of the religious, social, and economic conditions of the period just prior to the outbreak of the American Revolution; we have seen the great impetus given to those principles and the alliance formed with them by the patriotic principles of political freedom—the mainspring of the succeeding contest; we have seen how, under these influences, the Baptist organization, perhaps unconsciously, adopted the political form, and, thus armed, thrust pitilessly against the opposing religious organization until it helped to strike it down; we have seen that, though another church was fiercely followed, no individual as such was attacked or robbed of his rights; and we have seen that, at the end of the struggle, the Baptists had been largely instrumental in putting Virginia in the lead of the civilized nations in the assertion of the absolute freedom of religious faith from civil control.

This was a great achievement, a thing new in the history of the world. And it is a record of which any denomination and any people may be proud, this record of the plain, every-day people of our land. For the plain people knew then, as they know now, in government as in morals, that it is the truth that shall make us free.

BIBLIOGRAPHY.

Armitage, Thomas. History of the Baptists. N. Y., 1887. 1 vol.

Asplund, John. The Annual Register of the Baptist Denomination in North America to November 1, 1790.

Bailey, G. S. The Trials and Victories of Religious Liberty in America. 1776. A Centennial Memorial, 1876. American Baptist Publication Society, Phila.

Beale, G. W. Semple's History of the Baptists in Virginia. Revised and Extended. Richmond, Virginia, 1894.

Benedict, David. History of the Baptist Denomination. Boston Massachusetts, 1813. 2 vols.

—— Fifty Years among the Baptists. New York, 1860. 1 vol.

Bitting, C. C. Religious Liberty and the Baptists. Bible and Publication Society, Philadelphia.

—— Notes on the History of the Strawberry Baptist Association of Virginia for One Hundred Years—from 1776 to 1876. Published by the Association, 1879.

Bruce, Philip A. Economic History of Virginia in XVII Century. New York, 1896. 2 vols.

Campbell, C. History of Virginia. Philadelphia, 1860.

Curry, J. L. M. Struggles and Triumphs of Virginia Baptists. The Bible and Publication Society, Phila., 1873.

—— Establishment and Disestablishment. American Baptist Publication Society, Philadelphia, 1889.

Edwards, Morgan. Materials towards History of the Baptists. (History of Virginia Baptists ends 1772.) 1 vol.

Fiske, John. Old Virginia and Her Neighbors. Boston, 1897. 2 vols.

Foote, W. H. Sketches of Virginia. Series I. Philadelphia, 1850. 1 vol.

Fristoe, William. History of the Ketocton Baptist Association. Staunton, Virginia, 1808. 1 vol.

Gano, John. Life of Gano. New York, 1806. 1 vol.

Hawks, F. L. Protestant Episcopal Church in Virginia. New York, 1836.

Henry, W. W. Life of Patrick Henry. New York. 2 vols.

Hurst, J. F. Literature of Theology. New York, 1896. 1 vol.

Howell, R. B. C. Early Baptists of Virginia. Publications American Baptist Historical Society. Philadelphia, 1857.

James, C. F. Documentary History of the Struggle for Religious Liberty in Virginia. *Religious Herald*, Richmond, Va., December 8, 1898, and following numbers.

Jefferson, Thomas. Writings of. Washington, D. C. 9 vols.

Leland, John. Writings (ed. by Miss L. F. Green). New York, 1845. 1 vol.

McIlwaine, H. R. Struggle for Religious Toleration in Virginia. J. H. U. Studies in Hist. and Polit. Science, 1894.

Mason, George. Life of, by Kate Mason Rowland.

Meade, William. Old Churches and Families of Virginia. Philadelphia, 1885. 2 vols.

Rippon, John. Baptist Annual Register. London. 4 vols. 1790-1793, 1794-1797, 1798-1801, 1801-1802.

Semple, R. B. History of the Rise and Progress of the Baptists in Virginia. Richmond, Virginia, 1810. 1 vol.

Taylor, James B. Virginia Baptist Ministers. Series I., 3rd ed., New York, 1860, 1 vol.; Series II, New York, 1860. 1 vol.

Thomas, David. The Virginia Baptist, Baltimore, 1774. 1 vol.
Virginia Almanac for 1776, 1778, 1779. By David Rittenhouse, Williamsburg, Virginia.
Virginia, House of Burgesses, Journals of.
Virginia Conventions, Journals of, 1775, 1776.
Virginia, General Assembly of, Journals of.
Virginia, Statutes at Large. W. W. Hening. 13 vols.
Virginia, Code of.
Washington, George. Writings of.
Watson, Elkanah. Men and Times of the Revolution. 2 ed., New York, 1856.

INDEX

A

Adams, *Prof.* Herbert B., dedication to, 9; on "The Church and Popular Education," 393-476; 402 (note), 426, 439 (note), 444, 459, 467 (note).
Adams, *Dr.* T. S., public lecture, 450; on Taxation in Md., 13-75.
Administrators, tax on commissions of, 19, 21, 22, 34, 62-63.
America, causes of colonization, 261.
Ames, Adelbert, governor of Mississippi, 192.
Andrews, *Dr.* C. M., public lectures, 439-440.
Appeal Tax Court of Maryland, 34-39.
Armstrong, R. A., quoted, 464.
Arnold, Matthew, cited, 495.

B

Backus, *Rev.* Isaac, quoted, 563.
Ball, W. D., popular lectures, 456-460, 461-463.
Baltimore, predominance in Maryland, 14-15; population, 16; taxation, 29, 34-38, 40, 41, 50, 63, 71, 72. *See also* "Maryland"; educational work of churches, 430-467; founding of, 430.
Baltimore and Ohio R. R., dividends to state (Maryland) cease, 20.
Banks, opposition to, in Kansas, 127; in Iowa, 359-360, 371-373, 377-378, 379-382; taxation in Maryland, 61; in North Carolina, 100, 113; in Kansas, 149 (note); in Mississippi, 198, 199; in Georgia, 221, 239-240.
Baptists, educational work of churches, 441-443; Struggle for Religious Freedom in Virginia, 485-572; connection of struggles for religious and political freedom, 485; three branches, 486-488; constitution of a church, 490 (note), 513 (note); proselyting zeal, 489-492; revivals, 492-494; opposition of the ignorant classes, 495-497; arrests on peace warrants and punishments, 497-502; seat of persecution, 503; attitude of the Established Church, 503-504; petitions to General Assembly, 504-505; greatest period of persecution, 505; first session of association of "Separates," 505; growth of church, 505-506; causes of growth, 506-509; questions of dress, 510; grounds of opposition to the Established Church, 510-513, 516-520; numbers of, 514-518; petitions for toleration, 520-523; Revolutionary War, 526-528; first steps towards equality of clergy, 526-530; "sixteenth section," 530; petitions for religious freedom, 531-534; dissenters exempted from tithes, 534-538; salaries of clergy, 543; dissolution of vestries, 543, 544; civil power of vestries destroyed, 553-554; marriages by dissenting ministers, 538, 539, 542, 543, 544, 545-546, 547, 548, 549, 551; formation of General Committee, 548-549; union of "Regulars" and "Separates," 555; act of 1785 ending struggle for religious freedom, 555-556; subsequent career less praiseworthy, 557-558; act incorporating Protestant Episcopal Church repealed, 558; disposal of glebe lands, 558-566; Baptists were Puritans, 567-570; bibliography, 570-572.

Barnett, G. E., on "Taxation in North Carolina," 77-114.
Beadenkopf, *Rev.* T. M., 455-456.
Belser, Congressman, on admission of Iowa, 365-366.
Bennet, Richard, 282.
Benton, E. J., on "Taxation in Kansas," 115-176.
Berkley, *Sir* William, 323-324.
Berkley Temple (Boston), practical activities of, 420-421.
Bermuda Islands, within territory of Virginia, 274.
Bible, lack of literary study of, 463-466.
Bonds, taxation in Maryland, 38-39.
Bonus tax on corporations in Maryland, 51, 60.
Boundaries, settlement of (Iowa), 361-363, 367-368, 375-376.
Briggs, *Rev.* C. A., lecture, 463.
Brough, *Dr.* C. H., on "Taxation in Mississippi," 177-215.
Bryn Mawr College, origin, 453.
Bryn Mawr School, origin, 453.
Burke, Edmund, quoted on taxation, 193.

C

Calvert, Leonard, 300-304.
Carolina, North, Taxation in, 77-114; value of assessed property, 77; economic conditions of the state, 77-78; receipts and expenditures, 79-82; history of taxation, 82-86; personal property, 83, 85, 112-113. General Property Tax, 78, 86-92, 109-110; rates, 86-87; "listing" system, 88-90; defects, 90-92. License Taxes, 78, 92-97; colonial period, 92; distribution of receipts, 92; forms, 92-96; prohibition and sumptuary taxes, 96; collection, 96-97. Corporation Taxes, 78, 92, 96, 97-101, 113-114; assessment, 97-99; license taxes on corporations, 100; collection and productivity, 100-111. Poll Tax, 78, 82-83, 86, 101-105; former productivity, 101-102; expenditure, 102; rate, 102-103; collection, 103; amount, 103-104; regressive nature of, 104-105. Income Tax, 78, 105-108; former productivity, 105; provisions, 105-107; inconsistences, 107; small receipts from, 108. Inheritance Tax, 78, 108-111; history, 108-109; none at present, 109; advantages of a sound system, 109-111. Possible reforms in taxation, 111-114; bibliography, 114.
Cavalier exodus (Virginia), 508 (note).
Chautauquas, Jewish, 425-426.
Chautauqua Reading Circles, 424-425.
Chesapeake and Ohio Canal—dividends to (Maryland) cease, 20.
Choate, Rufus, on admission of Iowa and Florida, 366.
Christian Associations, Young Men, 426-430.
Church and Popular Education, 399-476; historic connection in New England, 399-402; institution of schools due to ministerial influence, 401-402; religious elements in the colonies, 402; "school, daughter of church," 403-407, 469; forerunners of institutional church, 407-408; origin of Sunday schools, 409-410; types of institutional churches, 410-424; Chautauqua Reading Circles, 424-425; Jewish Chautauquas, 425-426; Young Men Christian Associations, 426-427; educational work of Baltimore churches: Episcopalian, 430-438, Presbyterian, 438-439, Methodist, 439-441, Baptist, 441-443, Unitarian, 443-446, Quaker, 446-453; Quakers in origin and development of educational institutions, 452-453; Social Settlements in Baltimore, 453-459; Associate Congregational Church, 459-467; lack of literary study of Bible, 463-466; necessity of education for

adults, 467-471; church should be educator, 470-474; bibliography, 474-476.
Claiborne's rebellion, 303; settlement, 320-321.
Clark, *Rev.* E. L., popular lecture, 463.
Colonial Execution Prior to Restoration, 261-338; non-separation of functions of government, 264-266, 272. Virginia: charter of 1606, 267-270; powers of Virginia Council, 268-269; powers of colonists, 269-270; charter of 1609, 270-274; first governor, 271; first code, 273; charter of 1612, 274-275, 310, 312; legislative powers of executive, 264, 272, 273; selection of executive, 265, 270-271, 274, 278-279, 280, 282, 324-325; provisions for support of, 277; term of office, 277-278, 282; judicial powers, 280; military powers, 281; General Assembly constituted, 275, 276; powers of peace and war, 279; list of governors, 337-338. Massachusetts: 282-292, 315, 316, 325-329; first charter, 282-283; resemblance to Virginia charter of 1612, 283, 285; officers of governor in Virginia and Massachusetts contrasted, 284, 286; selection of governor, 283, 286, 287, 290, 292, 324-325; legislative powers of, 286, 288; judicial powers of, 286, 288-289; military powers of, 289; loss of powers, 291-292; list of governors, 337. Rhode Island: 292-294. Connecticut, 294-298; settlements in, 294, 296, 297; patent granted, 295 (note); "Fundamental Orders," 295; selection of executive, 295, 297; powers of executive, 296. Maryland: 298-306, 329-333; feudal proprietor, 298-299; charter of 1632, 299; statute of quia emptores disregarded, 300; selection of executive, 298-299, 300, 304, 305, 324-325; legislative powers of, 301; judicial powers of, 301, 305; administrative powers of, 302; legislative powers of proprictor; extraordinary powers of executive lessened, 329-332; effect of Revolution of 1660, 333; constitution of 1650, 332 (note).
Colonies, general provisions of charters, 262-264; non-separation of functions of government, 264-266, 272; policy toward before 1660, 307-308; forces favoring colonial autonomy, 308; colonial boards and commissions, 309-315; legislative beginnings, 317-320; effect of Revolution of 1688, 318.
Columbia University, origin, 404-405.
Confederate, period of taxation in Mississippi, 189-191; exemptions of veterans, 210.
Congregational Church, Associate, 459-467.
Connecticut: settlements, 294, 296-297; executive. *See* "Colonial executive."
Corporations, opposition to in Iowa, 360, 372, 377; number in Kansas, 163; taxation of, *see* "Georgia," "Kansas," "Maryland," "Mississippi," and "North Carolina."
Craig, Elijah, consecrated as pastor, 491.
Cromwell, Oliver, policy towards Maryland, 304, 305; policy towards Massachusetts, 315, 316.
Cumberland Road, 22.

D

Dale, *Sir* Thomas, Governor of Virginia, 273, 274, 275, 281.
Dartmouth College, origin, 408.
Davenport, John, 296, 298.
Debt, Maryland, 17, 22-26; North Carolina, 79-80, 82 (note); Kansas, 120-121; Mississippi, 181-183, 191; Georgia, 219-220.
Declaration of Rights (Maryland), 30, 65-66.

Dodge, A. C., 367 (note), 375, 376.
Dress, differences of Baptists, 510.
Dudley, Thomas, governor of Massachusetts, 290, 291.
Dyke, *Dr.* Henry van, quoted, 472-473.

E

Education, provisions for, in Maryland, 17; North Carolina, 82; Kansas, 135, 137, 141, 143, 174-176; Mississippi, 182, 183, 215; Georgia, 219, 225; Iowa, 360-361, 387, 388. *See also* "Church and Popular Education."
Ely, Richard T., quoted on taxation, 188 (note), 231-232.
Endicott, John, governor of Massachusetts, 283, 284, 290, 337.
England, New, attempt union under single executive, 313, 315.
Episcopal Church, in educational work, 430-438; opposition of Baptists, 520-521; incorporated in Virginia, 549, 551; act incorporating repealed, 558.
Executors, taxation of commissions of, 19, 21, 22, 34, 62-63.
Express companies, taxation of, 242.

F

Fees. *See* "Georgia," "Kansas," "Maryland," Mississippi," and "North Carolina."
Fendall, Josia, 305, 334.
Florida, proposed admission to the Union, 362, 366.
Ford, Reuben, 550, 557.
Forman, *Dr.* S. E., popular lectures, 427-430.
Franchise tax of savings banks (Maryland), 61.
"Friends." *See* "Quakers."
Fund system of Maryland, 16-17.
"Futures," taxation of (Georgia), 245.

G

Gates, *Sir* Thomas, 273, 275, 281.
Gebhardt, George, 459.
"General" Baptists, settlement in Virginia, 486.
Georgia, economic conditions of, 217-218; state debt, 219-220; settlement, 220. Taxation, 217-250; receipts and expenditures, 218-219; historical development, 220-221; present system, 222-225. General property tax, 225-237, 248; main source of revenue, 225; exemptions, 225-226; assessments, 226-230; state and local valuations, 230-231; escape of personalty, 232-233; other defects, 233-237. Poll and professional taxes, 237-238. Corporation taxes, 238-243; no special provisions for, 238; banks, 221, 239-240; railroads, 221-222, 240-242; express and telegraph, 242; telephone, 242; sleeping cars, 242-243. License taxes, 243-248. Need of wider diffusion of taxation, 249; present rates, 249; bibliography, 250.
Glebe lands, disposal of, 558-566.
Goldsborough, Comptroller (Maryland), quoted, 73.
Gorges, *Sir* Fernando, appointed governor-general of New England, 313.
Goucher, Pres. John F., 439, 440.
Grace and Emmanuel Churches (Baltimore), educational work, 434-435.
Grace Baptist Church (Philadelphia), practical activities, 422.
Gunsaulus, *Dr.* F. W., popular lecture, 463.

H

Harriss, Samuel, 489-492.
Harvey, *Sir* John, governor of Virginia, 320-322.
Henry, Patrick, 405; advice to dissenting ministers, 542, 551.
"Hicksites" (Quakers), practical activities of churches, 446-450.
Hodges, *Rev.* J. S. B., cited, 431.

Hollywood Children's Summer Home, 446.
Huckel, *Rev.* Oliver, 466-467.

I

Income tax, North Carolina, 78, 105-108; Kansas, 127.
Inheritance taxes, Maryland, 19, 21, 22, 30, 34, 61-62; North Carolina, 78, 108-111; Kansas, 169-173; Mississippi, 191.
Internal improvements, in Maryland, 20, 22-24; in Kansas, 120, 126-127.
Iowa, constitution and admission into Union, 345-392; a part of Louisiana Purchase, 346; a part of territory of Louisiana, 346; of Michigan, 346, 349-350; of Wisconsin, 346-347; a separate territory, 349-350; first settlement, 347; Claim Association, 348-349; internal opposition to statehood, 351-355; constitution of 1844, 355-362; attitude towards negro, 356-357, 382-387; opposition to banks and corporations, 359-360; education, 360-361, 387, 388; boundaries, 361-363, 367-368, 375-376; congressional provisions for admission, 362-363, 366; party alignments, 366-370, 377, 389; constitution rejected by voters, 368, 371; constitution of 1846, 371-374; adopted, 377; Iowa becomes a state, 377; opposition to constitution of 1846, 377-379; constitution 1857, 379-389; less unfavorable banking provisions, 379-382; location of capital, 388; legislative procedure, 388-389; subsequent amendments, 389-392.
Iyenaga, T. K., popular lecture, 459.

J

Jackson, Andrew, and United States Bank, 358-359.
James, *Dr.* J. A., on "Constitution and Admission of Iowa into Union," 339-392.
Jefferson, Thomas, student at William and Mary College, 404, 406; regards bills for religious freedom, 524, 535, 555; quoted, 536-537, 539-541.
Johns Hopkins University, influence of Quakers upon origin, 452-453.
Jones, *Sir* William, 309.
Judson Memorial Church (New York), practical activities, 420.

K

Kansas, economic conditions, 115-118; internal improvements, 120, 126-127; state debt, 120-121, 127; early history, 123-124; attempts to form state government, 126-129; anti-banking legislation, 127; public lands, 136-137. Taxation, 115-176: receipts and expenditures, 118-119, 121-122; state and local taxation, 139-140. General property tax, 129-135; 140-160, 166, 169-170: receipts from, 140; levy, 140-141; fund system, 141-142; assessment and collection, 143-149; personalty, 145; evils of "section readings," 149-157; irregularities of valuation, 151-160; mortgages, 160, 168. Corporation taxes, 135-136, 144, 161-163, 172; no special provisions for, 161; weakness of system, 163; insurance companies, 135-136, 144, 161-162, 164-165, 169-172; possible reforms, 169-172. License taxes and fees, 118, 163-165; no state license taxes, 163; state fees, 164-165. Poll tax and road tax, 125, 128-130, 133, 165-166; provisions for public education, 135, 137, 141, 174-176; possible reforms in taxation, 166-176; bibliography, 176.
Kaye, *Dr.* P. L., on "Colonial Executive prior to Restoration," 254-338.
Kidd, Benjamin, 473.
Kindergartens, 446, 452.
King, Francis T., 451, 452-453.
King, Mary, 466.

Knappert, *Dr.*, on Biblical education, 464.
Kriehn, *Dr.* George, popular lectures, 460.

L

Lands, public (Kansas), 136-137.
Latané, *Dr.* J. H., popular lecture, 450.
Laud, Archbishop, policy toward American colonies, 298, 312, 315.
Lawrence, *Rev.* E. A., social settlements, 453-456.
Lawrence Memorial Association, 453-459.
Leland, *Rev.* John, 495, 496, 501, 502, 557.
Lewis, *Dr.* A. F., on origin of Transylvania University, 404.
License taxes, in Maryland, 19, 21, 45-51; in North Carolina, 78, 92-97; in Kansas, 118, 163-165; in Mississippi, "privilege licenses," 177, 180, 191, 195, 206-212, 214; in Georgia, 243-248.
Lights, "Old and New Lights" (Baptists), 507.
"Listing system" in North Carolina, 88-90.
London Company, created, 270; dissolved, 278.
Louisiana Purchase, divisions, 346-347.

M

Madison, James, 405; marriage and vestry bills, 535, 541, 549, 551, 553-554.
"Madison Law," classification of land in Mississippi, 196 (note).
Mandeville, Lord, 310-321.
Marriages, by dissenting ministers, 538, 539, 542-549, 551.
Maryland, executive (colonial), 298-306, 329-333. *See* "colonial executive"; Puritan element, 568; settlement by Claiborne, 203, 320-321; resources, 13-15; predominance of Baltimore, 14-15; importance of agriculture, 15-16; state debt, 22-26; internal improvements, 22-24. Taxation, 13-75; "fund system," 16-17; historical development, 26-30. General property, 18, 19, 21, 30-45, 65, 68, 72; rate, levy and collection, 30, 31; union of state and local, 31; exemptions, 32-34; assessment, 34-37; valuation, 37-38; bonds, 38-39; personal property, 39; criticisms, 40-45. License taxes, 19, 21, 45-51; history, 45; forms, 45-49; criticisms, 49-51. Corporation taxes, 19, 21, 38, 51-61; forms, 51; on gross receipts of railroads, 52-56; personal property, 59; insurance companies, 57; capital stock of corporations, 57-58; bonus tax, 60; foreign, 60-61; franchise tax on savings-banks, 61; suggestions, 71-72. Inheritance tax, 19, 21, 22, 30, 34, 61-62; history, 61; merits, 61-62; commissioners of executors and administrators, 19, 21, 22, 34, 62-63; excess of fees, 19, 21, 22, 63; protests, 63-64; official commissions, 64; mortgages, 34, 64, 73-75; needed repeal of Fifteenth Article of Declaration of Rights, 65-68; "no representation without taxation," 68-71; further diffusion of taxation, 71-73; American Zollverein, 73-74; bibliography, 75.
Mason, Chas., on negro in Iowa, 356-357.
Mason, John, appointed vice-admiral of New England, 313.
Massachusetts, 282-292, 315, 325-329, 337. *See* "Colonial executive."
Mathews, *Dr.* E. B., quoted, 441-443.
McConnell, *Rev. Dr.* S. D., cited, 508.
McIlvaine, *Rev.* J. H., popular lecture, 463.
McSherry, Justice, quoted on taxation, 66.
Methodist Churches in educational work, 439-441.

Miner's Book of Dubuque, incorporated, 359.
Mississippi, economic characteristics, 177-179; state debt, 181-182, 191; formation of territory, 184; public education, 197, 205, 215. Taxation, 177-215; county, unit of taxation, 179; receipts and expenditures, 180, 182-183; back-tax collections, 181; territorial period, 184-187; period of ante-bellum statehood, 187-189; war period, 189-191; reconstruction period, 190-193; modern period of fiscal reform, 193-195; present rates, 178, 195. General property, 186-187, 195, 196-206; nature, 196; "Madison Law," 196 (note); maximum limit, 197; exemptions, 190, 197-198; assessment, 198-199; banks, 198, 199; railroads, 190, 200, 208, 211; collection, 200-201; escape of personalty, 202; rigidity and complexity, 204-206. Corporation taxation, not distinct from general property, 202-203, 214. Privilege-license, 177, 180, 181, 206-212, 214; displaces fee system, 181; varieties, 206-210; partial exemptions of Confederate veterans, 210; defects, 211-212. Poll tax, 179, 186, 195, 212-213; importance, 212-213; influence on suffrage, 213. Inheritance tax, 191; possible reforms in taxation, 213-215; bibliography, 215.
Morgan, Jas. M., quoted, 370.
"Moses and Aaron of New Haven," 298.
Mortgages, in Maryland, 34, 43, 64, 73-75; taxation in Kansas, 160, 168.
Mount Calvary, educational work, 435-438.
Murray, *Dr.* David, 403.

N

Negro, attitude of Iowa: convention of 1844, 356-358; effect of Mississippi poll tax upon suffrage, 213; convention of 1857, 382-387.
New Haven, settlement, 296-297.

O

Official commissions, taxation of (Maryland), 64.
Oort, *Dr.*, on Biblical education, 464.
Ordinance of 1787, 405; denounced, 363-364.
"Organic Law" of Iowa, 347-350.
"Oyster Fund" (Maryland), 17.

P

Palatinate, colony of Maryland, 299 (note).
Parkhurst, *Dr.* Chas. H., public lecture, 463.
"Parsons' Cause" (Virginia), 511.
People's Church (St. Paul), practical activities, 423.
Pilgrim Church (Worcester), practical activities, 421.
Plymouth, colony of, 292; Company dissolved, 292.
Plymouth Church (Milwaukee), practical activities, 422-423.
Plymouth Church (Salina), practical activities, 423.
Poll tax. *See* "Georgia," "Kansas," "Maryland" "Mississippi," and "North Carolina."
Poor's Manual, quoted on earnings of railroads, 53-54.
Presbyterian churches in educational work, 438-439.
Princeton University, origin, 403-404.
Privilege-license taxes. *See* "Mississippi."
Privy Council, relations with American colonies, 309, 312, 314, 315.
Professions, taxation in Georgia, 238.
Property, general and personal. *See* "Georgia," "Kansas," "Maryland," "Mississippi," and "North Carolina."
Protests, tax on in Maryland, 63-64.

Puritanism in Maryland and Virginia, 402; attempts to check in Maryland, 313.

Q

Quakers, educational work of churches, 446-453.
Quia emptores, statute of, disregarded in Maryland charter 1632, 300.

R

Railroad, dividends of N. C. and B. & O. to State of Maryland cease, 20; taxation in Maryland, 51-57; North Carolina, 97, 113; Kansas, 145; Mississippi, 190, 208, 211; Georgia, 221-222.
"Regular" Baptists in Virginia, 487.
Restoration. *See* "Colonial executive" and "Colonies"; opinion of Dr. Schouler, 307 (note).
Revolutionary War, attitude of Baptists in Virginia, 524-526.
Rhode Island, colonial executive, 292-294.
Road taxes (Kansas), 166.
Robinson, John, farewell sermon to Pilgrim Fathers, 464.
"Round Tables," 466.
Ruggles Street Baptist Church (Boston), practical activities, 421.

S

Saint Bartholomew's Church (New York), practical activities, 416-420.
Saint George's Episcopal Church (New York), practical activities, 413-416.
Saint Paul's Parish (Baltimore), educational work, 430-434.
Sandys, *Sir* George, 310 (note).
Savings banks, franchise tax on in Maryland, 51, 61.
Schelling, Felix C., lecture, 448.
Schmeckebier, *Dr.* L. F., on "Taxation in Georgia," 217-250.
Schouler, *Dr.*, quoted on effect of Restoration on colonies, 307 (note).
Shaw, W. Hudson, public lectures, 448-449.
"Sixteenth Section" (Virginia), 530.
Social Settlements in Baltimore, 453-459.
Sparks, *Rev.* Jared, 443.
Special Circular of Andrew Jackson, 359.
Specie payments, suspension forbidden in Iowa, 382.
Stearns, Shubal, 488.
Stockbridge, Jr., Henry, 460, 466.
Stone, William, 304.
Strong, *Dr.* Joseph, quoted, 473-474.
Studies in State Taxation, 1-250.
Suffrage. *See* "Negro."
Sunday school, origin, 409.
Surette, T. W., lectures, 445.
Susquehanna and Tide Water Canal Company dividends to Sate of Maryland cease, 20.
"Swarthmore Farm," 452.

T

Tabernacle (Jersey City), practical activities, 422.
Tax Commission, Maryland (1888), 53.
Taxation, Studies in, 1-250: Maryland, 1-75; North Carolina, 76-114; Kansas, 114-176; Mississippi, 177-215; Georgia, 216-250.
Thom, *Dr.* W. T., on "Struggle for Religious Freedom in Virginia," 477-572.
Thomas, David, 487, 488, 490.
Thomas, *Dr.* J. C., 452.
Thompson, R. E., 448.
Thomson, F. D., social settlements, 453-454.
Tithes, Baptists exempted, 534-538.
Toler, *Rev.* H., quoted, 563.
Transylvania University, origin, 404.
Trinity Church (Boston), practical activities, 410-413.
Turner, J. H., popular lecture, 450.

U

Unitarian churches in educational work, 443-446.
University Extension, 439-441, 448, 449; merits, 449-450.
Upper Spottsylvania Church, foundation, 490.

V

Vestries. *See* "Baptists."
Vincent, *Dr.* J. M., popular lectures, 459, 460, 466.
Vincent, *Mrs.* J. M., 459, 466.
Vincent, *Rev.* M. R., popular lectures, 463.
Vinton, Congressman, on admission of Iowa, 363-365, 375.
Virginia, executive, 267-282, 284-285. *See* "Colonial executive." Puritanism in, 402; struggle for religious freedom. *See* "Baptists."

W

Walker, Jeremiah, 503.
Washington, George, 404, 405; quoted, 485; letter, 525, 559-561.
Webber, William, 550.
Weeks, *Dr.* Stephen B., quoted, 451.
Weld, *Rev.* C. R., 444.
Wesleys, John and Charles, influence of preaching, 506.
West, *Sir* Thomas Lord La Warr or Delaware, governor of Virginia, 271, 275, 284.
Westminster Presbyterian Church (Buffalo), practical activities, 423-424.
Whitney, Annie C., 466.
William and Mary College, origin, 404, 408.
Winthrop, John, governor of Massachusetts, 290, 291, 322, 327.
Witt, *Prof.* John De, quoted on origin of Princeton University, 403.
Wolcott, Oliver, 221.
Wyandotte, constitution of (Kansas), 128-129; resemblance to constitution of Ohio, 129 (note).
Wyatt, *Sir* Francis, 278, 279.

Y

Yeardley, *Sir* George, governor of Virginia, 275, 276, 278, 279.
Yeo, *Rev.* John, 430.

Z

Zollverein, proposal for an American, 73-75.

BRABANDT & WALTERS
BOUND
JUN 5 1936
CHICAGO, ILL.